

8-13-2013

Cummings v. Stephens Clerk's Record v. 7 Dckt. 40793

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IN THE SUPREME COURT
OF THE STATE OF IDAHO

Supreme Court Docket No.
40793-2013

STEVEN CUMMINGS

Plaintiff/Appellant/ Cross Resp

vs. **LAW CLERK**

ROGER L. STEPHENS, et al

Defendant/Respondent/Cross-

DAVID C. NYE District Judge
Appealed from the District Court of the SIXTH
Judicial District of the State of Idaho, in and for
BEAR LAKE County.

Nathan M. Olsen,
Attorney for Plaintiff/Appellant/Cross-Respondent

Brad Bearnson,
Attorney for Defendant/Respondent/Cross-Appellant

FILED - COPY
AUG 13 2013
Supreme Court Court of Appeals
Entered on _____

40793

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KERRY WADDOCK, CLERK

DEPUTY _____ CASE NO.

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
bbearnson@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Case No. CV-2009-183

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

**DEFENDANT NORTHERN TITLE'S
OBJECTION AND RESPONSE TO
PLAINTIFF'S MOTION FOR LEAVE
TO AMEND THE COMPLAINT**

Defendants.)
_____)

ROGER L. STEPHENS, an individual,)
Third Party Plaintiff,)

vs.)

DOROTHY JULIAN, an individual)
residing in Eagle, Idaho, EVAN)
SKINNER, an individual residing in)
Montpelier, Idaho, RYAN OLSEN, an)
individual residing in Georgetown,)
Idaho, EXIT REALTY OF BEAR)
LAKE, LLC an Idaho Limited Liability)
Company, JOHN DOES 1-X.)

Third Party Defendants.)
_____)

DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE
TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT

Case No. CV-09-183

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COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,
(hereinafter "Defendant"), through counsel of Bearnson & Caldwell, LLC, and hereby provides
this *Objection and Response to Plaintiff's Motion for Leave to Amend the Complaint*.

**I. PLAINTIFF'S REQUEST TO NOW AMEND ITS PLEADINGS IS ENTIRELY
UNTIMELY AND THEREBY UNFAIR.**

Under Rules 16 and 26 of the Idaho Rules of Civil Procedure, the calendar of a case is
within the sound discretion of the Court. See I.R.C.P. 16(b) and 26(d); see also *Seiniger Law
Office, P.A. v. North Pacific Ins. Co.*, 145 Idaho 241, 249-250, 178 P.3d 606, 615 (Idaho 2008)
(denial to add a prayer for punitive damages affirmed as sound discretion of the trial court).

Per the *Order Setting Jury Trial*, "motions to add new parties or amend pleadings shall be
filed no later than 60 days after the date of this Order." *Order Setting Jury Trial* at ¶ 3, attached
hereto as Exhibit "A." Plaintiff's motion to amend his Complaint is over one hundred and fifty
(150) days after the Court's *Order Setting Jury Trial*, and Plaintiff's motion will not be decided
until two (2) weeks from trial. See *Order Setting Jury Trial* at ¶ 1 (setting Trial for July 31, 2012).

While Rule 15 states that amendment of the pleadings should occur where justice requires,
the very principle of justice strongly suggests Plaintiff's motion should be denied. Being over
three (3) months from the given deadline, where the motion will not be ruled on until two weeks
prior to trial, Plaintiff's attempt to amend is unfairly late. Plaintiff also vaguely relies on
pleadings long in his possession as grounds for punitive damages. Under these circumstances,
Plaintiff's motion is neither fair nor just, and should be denied.

II. THE COURT SHOULD DENY PLAINTIFF'S MOTION WHERE PLAINTIFF HAS FAILED TO PROVE THAT PUNITIVE DAMAGES EXIST BY A PREPONDERANCE OF THE EVIDENCE.

As Plaintiff mentions in his own brief, punitive damages at trial must be proven by *clear and convincing* evidence, and punitive damages may not be amended into the pleadings absent proof by a *preponderance of the evidence*. See I.C.A. 6-1604(2).

Punitive damages are the rare exception, not the rule. Specifically, “[p]unitive damages are not favored in the law and should be awarded in only the most unusual and compelling circumstances.” See *Seiniger Law Office*, 145 Idaho at 250, 178 P.3d at 615 (citing *Manning v. Twin Falls Clinic & Hosp.*, 122 Idaho 47, 52, 830 P.2d 1185, 1190 (1992)).

Specifically, two elements must be proven. First, Plaintiff must prove that a bad act was “an extreme deviation from reasonable standards of conduct . . . performed by the defendant with an understanding of or disregard for its likely consequences.” *Id.* Second, Plaintiff must prove a bad state of mind, wherein the “mental state required to support an award of punitive damages is an extremely harmful state of mind, whether that be termed malice, oppression, fraud or gross negligence; malice, oppression, wontonness; or simply deliberate and willful.” *Id.* Plaintiff is far from meeting this burden.

Plaintiff argues that punitive damages are warranted (1) where allegedly written instructions from Cummings to Northern Title were not obtained prior to recording the Corrected Warranty Deed, and (2) where allegedly Northern Title improperly denied Plaintiff's claims and has defended itself alongside Defendant Stephens, rather than indemnify Plaintiff.¹

¹ Plaintiff also makes several personal and bald accusations against attorney Brad Bearson and Northern Title of allegedly delaying and frustrating these proceedings or misrepresenting facts to the Court. See *Pl's. Mem. Supp.*

Plaintiff's argument is largely placed on the testimony of Lenore Katri, whose exclusion from trial is pending before this Court. Ms. Katri opined that failure to get written instructions from all parties prior to recording a corrected warranty deed would be an extreme deviation. She also opined that it would not be appropriate to "take one side of the issue" should a claim arise between the parties. See *Pl's. Mem. Supp. Amend Compl.* at 7 (citing *Katr Depo*, 161:20-25, 162:1-20). Katri's opinions, and Plaintiff's assertions based thereon, are factually and legally insufficient.

First, no evidence exists that Northern Title acted with a malicious, reckless, extremely harmful state of mind. At worst, the facts show confusion followed by a good faith attempt to conform the agreement to the parties' understanding. By the time Plaintiff became involved in late July of 2007, the property was under contract to Three Bar Ranches, Inc., and two title commitments by Northern Title had been issued to Three Bar Ranches, Inc. Each title commitment was made expressly and solely to Three Bar Ranches, Inc., and erroneously contained different and incorrect legal descriptions. See *Lori Thornock Aff'd*, ¶¶ 7-9, attached hereto as Exhibit "B."² Within days, Plaintiff purchased the Real Estate Purchase and Sales Agreement from Three Bar Ranches, Inc., but at least two versions of the Real Estate Purchase and Sale Agreement were circulating between Cummings and the Realtors. See *Skinner to Cummings REPC* and *Julian to Cummings REPC*, both attached hereto as Exhibit "C." Amidst this flux of changing buyers, Northern Title worked solely with the realtors, and was consistently informed by the realtors that the sale included only that property west of Highway 30. See *Lori Thornock 2d*

Amend Compl. at 5-7. Even if Plaintiff's accusations were true, these arguments are not pertinent to Plaintiff's burden in proving by a preponderance of the evidence the appropriateness of punitive damages.

² Exhibits have been excluded.

Aff'd. ¶ 7, attached hereto as Exhibit "D." Northern Title's understanding has been corroborated by both of the realtors' testimony, Evan Skinner and Dorothy Julian. See *Evan Skinner Aff'd*. ¶¶ 8, 13, attached hereto as Exhibit "E"³; see also *Dorothy Julian Aff'd*. ¶¶ 9, 12, 13, attached hereto as Exhibit "F."⁴ Further, the escrow contract expressly allowed Northern Title to follow instructions received by the realtors. See *Escrow General Provisions* at ¶ 2, attached hereto as Exhibit "G." Therefore, when Lori Thornock recorded the corrected warranty deed, she believed she was doing just that – making a good faith scrivener's correction:

In the course of the transaction, Northern Title's contact was limited to the realtors, Dorothy Julian and Evan Skinner . . . Both Ms. Julian and Mr. Skinner indicated that Mr. Stephens intended only to sell property west of Highway 30. This was my understanding from the very beginning. The reason for re-recording the existing warranty deed was not to change the transaction between Mr. Stephens and Mr. Cummings, but to conform the warranty deed to what I always understood to be the intent of the Real Estate Purchase Contract.

Lori Thornock Aff'd. ¶¶ 7-8.

Far from Plaintiff's conclusory accusations, the facts show Northern Title acted with a good, helpful state of mind – not an extremely harmful, egregious or reckless one.

Second, Northern Title has not acted in bad faith in defending against Plaintiff's claims. Katri opines that as an escrow and insurer, merely taking one side of the issue is inappropriate. But that is not the law. Per the Supreme Court of Idaho, a claim for bad faith will not lie unless (1) an insurer intentionally and unreasonably denies or withholds payment, (2) the claim was not fairly debatable, (3) denial or failure to pay was not the result of a good faith mistake, and (4) the resulting harm is not fully compensable by contract damages. *Robinson v. State Farm Mut. Auto.*

3 Exhibits excluded.

4 Exhibits excluded.

Ins. Co., 137 Idaho 173, 45 P.3d 829 (2002); *McGilvray v. Farmers New World Life Ins. Co.*, 136 Idaho 39, 28 P.3d 380 (2001); *Anderson v. Farmers Insurance Co. of Idaho*, 130 Idaho 755, 947 P.2d 1003 (1997). Therefore, an insurer does not act in bad faith when it merely challenges the validity of a fairly debatable claim or when a delay results from honest mistakes. See *White v. Unigard Mut. Ins. Co.*, 112 Idaho 94, 96, 730 P.2d 1014 (Idaho 1986). Thus far, a “bad faith” tort against an escrow for defending itself has not been recognized in Idaho.

Northern Title recorded the corrected warranty deed pursuant to its past and present understanding of the transaction. That Northern Title now in good faith defends itself against Plaintiff’s claims is not bad faith.

III. FOR THE COURT’S CONVENIENCE, SOME OF PLAINTIFF’S MISPLACED ASSERTIONS WILL BE ADDRESSED.

Starting on page two of his memorandum, Plaintiff lists fourteen bases (listed in numbered paragraphs one through fourteen) for punitive damages. Most have been addressed above, but a few deserve special attention. They have been numbered to correspond with Plaintiff’s memorandum:

1) Northern Title recorded the Original Warranty deed in good faith compliance with the Escrow General Provisions. Under the Escrow General Provisions, Plaintiff acknowledges he had “been given an opportunity to review all documents at closing and to seek independent advice or counsel concerning those documents, if desired.” *Escrow General Provisions*, ¶ 3. The closing documents were provided by Northern Title to Plaintiff’s courtesy exchange company. Northern Title subsequently obtained those closing documents directly by subpoena, and a copy of the legal description provided at closing is attached hereto as Exhibit “H.” The legal description matches

the Original Warranty Deed recorded on August 3, 2007. See *Original Warranty Deed*, attached hereto as Exhibit "I." Therefore, Plaintiff's assertion is false.

3) To suggest an insurer or escrow agent cannot "take sides" *after* becoming aware of what it believes is a fraudulent claim is tantamount to suggesting Northern Title may not in good faith deny a claim. Plaintiff's claims are more than fairly debatable given the above explained evidence. As explained above, neither Idaho nor any contract between the parties prevent Northern Title from defending itself in this action.

5) The delay in issuing the insurance policy was a direct result of Plaintiff's instructions to Northern Title, in attempting to first place the property in trust. See *Internal Correspondence Documents*, attached hereto as Exhibit "J." Plaintiff also misconstrues the internal "log notes" to his own advantage. The log notes themselves were written by Northern Title's *escrow officer*, Lori Thornock, in documenting her correspondence with "Monique," Northern Title's title officer. See *Log Notes*, attached hereto as Exhibit "K." The substance of that correspondence referenced to in Exhibit "K," namely that Cummings' insurance policy should be placed in his individual name and not into a trust, and that such should be issued according to the Corrected Warranty Deed, is noted in Exhibit "J" herein. Therefore, Plaintiff's assertion is entirely misstated.

11) Plaintiff's assertion that Northern Title acted deceitfully merely by the fact that Evan Skinner and Lori Thornock are related by marriage is grasping at straws.

12) Plaintiff baldly alleges spoliation of evidence, without even reading the deposition transcript submitted to support such. Lori Thornock did admit to deleting emails, but she

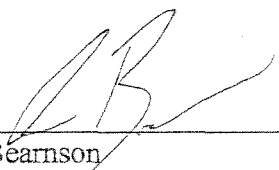
specifically testified that as a matter of systematical course she deletes emails every six (6) months – and that those kinds of emails were not even ordinarily placed into the file. See Nathan Olsen Aff'd., Ex. 3 (citing *Thornock Depo.* 134:4-5, 135:9-10). The Idaho Supreme Court has pointed out, “[a]ssuming arguendo that . . . spoliation of evidence is part of the law of Idaho,” such a claim only exists where the spoliation is done with an intentional intent to destroy or conceal evidence of a claim. *Toakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 178, 923 P.2d 416, 423 (Idaho 1996). The systematic deletion of emails that are not part of an official file is a far cry from spoliation.

CONCLUSION

On all counts, Plaintiff’s motion should be denied. The motion is grossly untimely, and even still relies heavily on facts and evidence that have long been in Plaintiff’s possession. Notwithstanding, the specific affidavits, contracts and documents of the record prove the inappropriateness of punitive damages.

DATED this 10th day of July, 2012.

BEARNSON & CALDWELL, LLC



Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of July, 2012, I served a true and correct copy of the above and foregoing **DEFENDANT NORTHERN TITLE'S OBJECTION AND RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE COMPLAINT** to the following person(s) as follows:

Nathan M. Olsen	[x] U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	[] Hand Delivery
485 "E" Street	[] Overnight Mail
Idaho Falls, Idaho 83402	[] Facsimile (208-524-3391)
	[x] Email (Nathan@pmholaw.com)
Randall C. Budge	[x] U.S. Mail/Postage Prepaid
Jason E. Flaig	[] Hand Delivery
RACINE, OLSON, NYE, BUDGE &	[] Overnight Mail
BAILEY, CHARTERED	[] Facsimile (435-752-6301)
P.O. Box 1391; 201 E. Center Street	[x] Email rcb@racinelaw.net
Pocatello, Idaho 83204-1391	jef@racinelaw.net
Phillip J. Collaer	[x] U. S. Mail/Postage Prepaid
Anderson Julian & Hull, LLP	[] Hand Delivery
250 S. 5 th Street, Ste. 700	[] Overnight Mail
PO Box 7426	[] Facsimile (208-344-5510)
Boise, Idaho 83707-7426	[x] Email (pcollaer@ajhlaw.com)

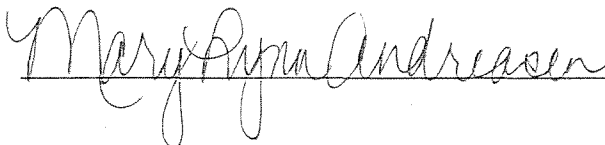


EXHIBIT "A"

Def NT Obj

1247

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO

Jan 27, 2012 9:33 am

DATE TIME
CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

DEPUTY CASE NO.

Register # CV-2009-0000183

STEVEN CUMMINGS,
Plaintiff,

-vs-

ROGER L STEPHENS,
NORTHERN TITLE COMPANY OF IDAHO, INC.,
JOHN DOES I - X,
Defendants.

NORTHERN TITLE COMPANY OF IDAHO, INC.,
Third Party Plaintiff,

-vs-

DOROTHY S JULIAN,
EVAN E SKINNER,
RYAN L. OLSEN,
EXIT REALTY OF BEAR LAKE,
JOHN DOES 1-X
Third Party Defendants.

ORDER SETTING JURY TRIAL

(1) TRIAL DATE. This matter is set for JURY TRIAL on the 31st day of July, 2012, AT THE HOUR OF 9:00 A.M., in the Bear Lake County Courthouse, Paris, Idaho. All deadlines listed below shall apply to the trial setting listed above. The parties should plan to try the case on that date. A continuance of the trial date shall occur only upon written Motion or Stipulated Motion

Def NT Obj

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to the Court which clearly states the reasons for the requested continuance and which certifies that the request or stipulation has been discussed with and agreed to by the party(ies). An Order continuing the trial date to the backup trial date will not alter the deadlines set forth in this Order, except for good cause shown.

(2) PRE-TRIAL CONFERENCE. No pre-trial conference will be held unless requested by any party in writing at least 30 days prior to trial and ordered by the Court. Pursuant to I.R.C.P. 16(e), in lieu of a pre-trial conference, trial counsel for the parties (or the parties if they are self-represented) are ORDERED to meet and/or confer for the purpose of preparing a joint Pre-Trial Stipulation, which shall be submitted to the Court at least 21 days prior to Trial, and shall include:

(A) A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all exhibits to be offered at trial by both parties. The Exhibit List shall indicate: 1) by whom the exhibit is being offered, 2) a brief description of the exhibit, 3) whether the parties have stipulated to its admission, and if not, 4) the legal grounds for any objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.

(B) A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.

(C) A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witness' testimony will be objected to in its entirety and the legal grounds therefore.

(D) A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.

(E) A statement that counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.

(F) A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.

(G) A statement of all issues of fact and law which remain to be litigated, listing which

party has the burden of proof as to each issue.

(H) A list of any stipulated admissions of fact, which will avoid unnecessary proof.

(I) A list of any orders requested by the parties which will expedite the trial.

(J) A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.

(3) **MOTIONS TO ADD NEW PARTIES OR AMEND PLEADINGS** shall be filed no later than 60 days after the date of this Order.

(4) **DISCOVERY** must be served and completely responded to at least 60 days prior to trial. This includes supplementation of discovery responses required by I.R.C.P. 26(e), unless good cause is shown for late supplementation. Discovery requests must be responded to in a timely way as required by the I.R.C.P. The deadlines contained in this Order cannot be used as a basis or reason for failing to timely respond to or supplement properly served discovery, including requests for disclosure of witnesses and/or trial exhibits. Discovery disputes will not be heard by the Court without the written certification required by I.R.C.P. 37(a)(2).

(5) **WITNESS DISCLOSURE**. Except as previously disclosed in responses to discovery requests, Plaintiff shall disclose all fact and expert witnesses no later than 140 days before trial. Defendants shall disclose their fact and expert witnesses no later than 105 days before trial. Rebuttal witnesses shall be disclosed no later than 70 days before trial. Expert witnesses shall be disclosed in the manner and with the specificity required by I.R.C.P. 26(b)(4)(A)(i). Witnesses not disclosed in responses to discovery and/or as required herein will be excluded at trial, unless allowed by the Court in the interest of justice.

(6) **MOTIONS. DISPOSITIVE MOTIONS**, and responses thereto, shall comply in all respects with I.R.C.P. 56 and be filed no later than 90 days before trial. **ALL OTHER MOTIONS**, including any Motion in Limine, shall be filed and heard by the Court no later than 30 days before trial. **One duplicate Judge's Copy of all Motions, and any opposition thereto,**

together with supporting affidavits and documents, shall be submitted directly to the Court's chambers in Bannock County. All the duplicates must be stamped "Judge's Copy" to avoid confusion with the original pleading. All other pleadings, notices, etc., should be filed with the Clerk without copies to the Court's chambers.

(7) **TRIAL BRIEFS**. Trial briefs are encouraged but not required. If submitted, trial briefs should address substantive factual, legal and/or evidentiary issues the parties believe are likely to arise during the trial, with appropriate citation to authority. Any trial brief should be exchanged between the parties and submitted to the Court, including a duplicate Judge's Copy submitted to chambers in Bannock County, no later than 10 days prior to trial.

(8) **PRE-MARKED EXHIBITS AND AN EXHIBIT LIST IN THE FORM ATTACHED HERETO** shall be exchanged between the parties and filed with the Court no later than 10 days prior to trial. Each party shall also lodge with the Court at chambers a duplicate completed exhibit list together with one complete, duplicate marked set of that party's proposed exhibits for the Court's use during the trial. Unless otherwise ordered, Plaintiff shall identify exhibits beginning with the letter "A" and the Defendant shall identify exhibits beginning with the number "1."

(9) **JURY INSTRUCTIONS**. Proposed jury instructions and verdict forms requested by any party shall be prepared in conformity with I.R.C.P. 51(a), except that they shall be filed with the Court and exchanged between the parties at least 7 days prior to trial. Except for good cause shown, proposed jury instructions should conform to the pattern Idaho Jury Instructions (IDJI) approved by the Idaho Supreme Court. In addition to submitting written proposed instructions that comply with Rule 51(a), the parties shall also submit both a clean version and a version with cited authority by e-mail to the Court's Clerk, in Word format, at least 7 days prior to trial. Certain "stock" instructions need not be submitted. These will typically include IDJI 1.00, 1.01, 1.03,

1.03.1, 1.05, 1.09, 1.11, 1.13/1.13.1, 1.15.1, 1.17, 1.20.1, and 1.24.1. It is requested that the parties agree on the basic instruction giving the jury a short, plain statement of the claims, per IDJI 1.07.


(10) **MEDIATION**. Pursuant to I.R.C.P. 16(k)(4), the parties are ORDERED to mediate this matter, and the mediation shall comply with I.R.C.P. 16(k). Mediation must be held no later than 30 days prior to trial.

(11) **TRIAL PROCEDURES**. A total of THREE (3) trial days have been reserved for this trial. If the parties believe that more trial days will be required, the parties are ORDERED to notify the Court of this request no less than 60 days prior to trial. On the first day of trial, counsel shall report to the Court's chambers at 8:30 a.m. for a brief status conference. Unless otherwise ordered, or as modified during trial as necessary, trial days will begin at 9:00 a.m. and close at or about 3:00 p.m., with two 20 minute recesses taken at approximately 11:00 a.m. and 1:00 p.m.

(12) **HEARINGS OR CONFERENCES WITH THE COURT**. All meetings, conferences, and/or hearings with the Court shall be scheduled in advance with the Court's Clerk by calling 208-945-2208, ext 23. No hearing shall be noticed without contacting the Clerk.

(13) **ALTERNATE JUDGES**. Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G), that an alternate judge may be assigned to preside over the trial of this case, if the current presiding judge is unavailable. The list of potential alternate judges is: 1) Honorable Peter D. McDermott; 2) Honorable Stephen S. Dunn; 3) Honorable Mitchell W. Brown; 4) Honorable William H. Woodland; 5) Honorable Richard T. St. Clair.

DATED January 27, 2012.



DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of January, 2012, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

PLAINTIFF ATTORNEY:

Nathan M Olsen

485 "E" Street
Idaho Falls ID
(208) 524-3391

- Faxed
- Hand Delivered
- Mailed

DEFENDANTS ATTORNEY:

Randall C. Budge
P.O. Box 1391
Pocatello ID 83204

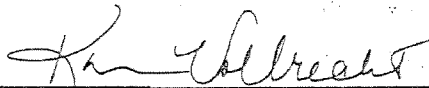
- Faxed
- Hand Delivered
- Mailed

Brad H Bearnson
399 North Main, Suite 270
Logan UT 84321
(435) 752-6301

- Faxed
- Hand Delivered
- Mailed

Phillip John Collier
PO Box 7426
Boise ID 83707
(208) 344-5510

- Faxed
- Hand Delivered
- Mailed



Deputy Clerk

Def NT Obj

1253

EXHIBIT "B"

Def NT Obj

1254

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Facsimile: 208-232-6109
rcb@racinelaw.net

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X.)
)
Defendants.)
_____)

Case No. CV-09-183

AFFIDAVIT OF LORI THORNOCK

STATE OF IDAHO)
 : ss.)
County of Bear Lake)

LORI THORNOCK, being first duly sworn on oath, deposes and states as follows:

1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.

2. I am currently the Office Manager of Northern Title Company of Idaho ("Northern Title") located in Montpelier, Idaho. I am familiar with the office policies and procedures in place during 2007.

3. In 2007 I was the Escrow Officer/Manager at Northern Title, which handled a transaction whereby Steven Cummings purchased property from the Roger L. and Barbara L. Stephens Family Trust ("Stephens Family Trust").

4. I assisted in the closing of the transaction between Steven Cummings and the Stephens Family Trust that occurred on or about August 3, 2007.

5. On or about July 16, 2007, Evan Skinner of Exit Realty of Bear Lake informed Northern Title of a potential transaction between an undisclosed buyer and ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST and requested a title commitment covering the Stephens Family Trust property located West of Highway 30.

6. Based upon these instructions, Northern Title prepared the legal description used for the Commitment for Title Insurance intending it to cover the Stephens' property located West of Highway 30.

7. On or about July 31, 2007, Northern Title released the initial Commitment for Title Insurance referenced as Order No. NTBL-1183 ("Title Commitment") to Exit Realty. This Title Commitment was intended to cover only that portion of the Stephens' property lying West of Highway 30. However, the legal description contained in the initial Title Commitment failed to contain the necessary exclusionary language limiting the property to that lying West of Highway 30. The Title Commitment contained a plat map with arrows clearly indicating that the property involved

included only real property located West of Highway 30. A true and correct copy of the Title Commitment, as delivered to Exit Realty, is attached hereto as Exhibit "1" and incorporated herein by reference.

8. Within a day or two of delivering the initial Title Commitment to Exit Realty, Dorothy Julian contacted our office to confirm that the Title Commitment included only property located West of Highway 30. We then checked our file to verify that the described property included only property located West of Highway 30. In making this review it was discovered that the required exclusionary language was not included in the legal description of the property attached to the Title Commitment.

9. Shortly thereafter, we issued a revised Commitment for Title Insurance ("Second Title Commitment") inserting the exclusionary language after Parcel A, as listed. Again, this revised legal description was intended to describe only land on the West side of Highway 30. Unfortunately, the exclusionary language was misplaced and should have been located at the top of the entire legal description. However, the Second Title Commitment again contained a plat map with arrows all clearly indicating that the property involved included only real property located West of Highway 30. The plat map attached to the Second Title Commitment contains arrows identifying the property lying West of Highway 30. Upon information and belief, the Second Title Commitment was used for the closing of the transaction between Steven Cummings and the Stephens Family Trust. A true and correct copy of the Second Title Commitment is attached hereto as Exhibit "2".

10. We delivered the Second Title Commitment to Exit Realty, prior to the August 3 closing and confirmed with Dorothy Julian verbally that the legal description identified only the property located West of Highway 30.

11. Based on what I was told by both Evan Skinner and Dorothy Julian (the real estate agents involved), I was of the understanding and belief that they and Steven Cummings were all aware that the property being purchased by Mr. Cummings was only that located West of Highway 30.

12. During the closing of the transaction, Steven Cummings elected to courtesy close at his 1031 Exchange company located in Utah. A copy of the Second Title Commitment was included in the closing material sent by Northern Title to Steven Cummings's 1031 exchange company, acting as courtesy closer. In fact, one of the documents that I received back from Mr. Cummings side of the closing was the plat map attached hereto as Exhibit 3.

13. During the closing of the transaction, Steven Cummings signed a copy of Northern Title's Escrow General Provisions. A true and correct copy of the Escrow General Provisions is attached hereto as Exhibit "4" and incorporated herein by reference. Paragraph 11 of the Escrow General Provisions states that Steven Cummings "acknowledges receipt of a copy of, and an opportunity to review" a copy of the title commitment issued by Northern Title.

14. On August 3, 2007, Northern Title recorded a Warranty Deed as Instrument #199303 in the records of Bear Lake County, Idaho ("Original Warranty Deed"). The legal description attached to the Original Warranty Deed was the same Exhibit A attached to Exhibit 1, hereto. Again, when the legal description was prepared, it was intended to describe and I believed it described only

that portion of the Stephens' property lying West of Highway 30. A true and correct copy of the Original Warranty Deed, as recorded, is attached hereto as Exhibit "5".

15. On or about November 8, 2007, I was contacted by Roger Stephens, who indicated to me that he was told by the Bear Lake County Assessor's office that there was an error in the legal description on Exhibit A attached to the Original Warranty Deed, and that he should contact Northern Title to prepare and record a Correction Deed to correct the legal.

16. After speaking with Roger Stephens, I reviewed the documentation and platted the legal description involved in the transaction between Steven Cummings and the Stephens Family Trust and identified the error in the legal description on Exhibit A to the Original Warranty Deed. The error was made in the placement of the language "EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY 30" ("Exception Language"). The Exception Language had been placed on Exhibit A following the legal description for Parcel A, when the Exception Language should have been placed at the top of Exhibit A, thereby covering the legal descriptions for all parcels involved in the transaction.

17. At the time Roger Stephens contacted me on or about November 8, 2007, Northern Title was still in possession of the Original Warranty Deed. Northern Title had been holding the Original Warranty Deed since the August 3, 2007 closing pursuant to further verbal instructions from Steven Cummings, as to the proposed grantee. Mr. Cummings had asked that the property he was purchasing from the Stephens Family Trust be put into his "Trust" prior to issuing the owners policy. In order to comply with Mr. Cummings' request, Northern Title was required to have a copy of Mr. Cummings' Trust to ensure that the Warranty Deed was in compliance with the Trust instruction.

On November 8, 2007, I was still waiting for Steven Cummings to provide Northern Title with a copy of his Trust.

18. On or about November 8, 2007, after determining that scrivener's error had occurred in the legal description on Exhibit A to the Original Warranty Deed, I received authorization from Paul Davis, President of Northern Title, to correct and re-record the Warranty Deed. I also attempted to contact Steven Cummings via his cell phone, leaving several messages, but did not receive a response. Based upon the instructions given by the real estate agents, and the understanding of Northern Title that the transaction included only property on the west side of Highway 30, I corrected the legal error on the Original Warranty Deed by placing "x" marks through the Exception Language and by placing the following language at the top of Exhibit A: "***THE FOLLOWING PARCELS ARE CONVEYED EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF U.S. HIGHWAY 30***". These corrections to the Original Warranty Deed were made to reflect the understanding and original intent of Northern Title as to the property covered in the transaction.

19. On November 8, 2007, I re-recorded the corrected Warranty Deed as Instrument #199911 in the records of Bear Lake County, Idaho ("Correction Warranty Deed"). A true and correct copy of the Correction Warranty Deed is attached hereto as Exhibit "6" and incorporated herein by reference.

20. On April 9, 2008, Northern Title issued its Owners Policy of Title Insurance ("Title Policy") to Steven Cummings. The Title Policy contained a plat map with arrows clearly indicating that the property involved included only the real property located West of Highway 30. The plat map attached to the Title Policy was exactly the same as the plat map attached to the Title Commitment and the Second Title Commitment. A true and correct copy of the Title Policy is attached hereto as

Exhibit "7" and incorporated herein by reference. The Title Policy as issued to Steven Cummings includes only property located West of Highway 30, as identified on "Exhibit A" of the Title Policy.

FURTHER SAITH AFFLIANT NAUGHT.

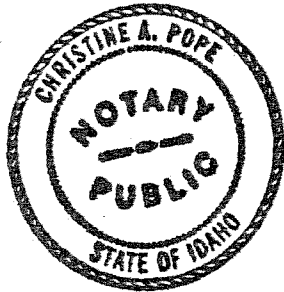
Dated this 17th day of September, 2010.

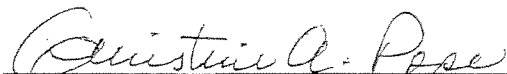


LORI THORNOCK

SUBSCRIBED AND SWORN TO before me this 17th day of September, 2010.

(SEAL)





NOTARY PUBLIC FOR IDAHO
Residing at: Bear Lake County
My Commission Expires: 01-26-2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of September, 2010, I served a true and complete copy of the foregoing document on the following persons in the manner indicated:

Nathan M. Olsen	<input checked="" type="checkbox"/>	U.S. Mail/Postage Prepaid
Beard, St. Clair, Gaffney PA	<input type="checkbox"/>	Hand Delivery
2105 Coronado Street	<input type="checkbox"/>	Overnight Mail
Idaho Falls, Idaho 83404-7495	<input type="checkbox"/>	Fax
Brad H. Bearnson	<input checked="" type="checkbox"/>	U.S. Mail/Postage Prepaid
Bearnson & Peck, L.C.	<input type="checkbox"/>	Hand Delivery
399 North Main, Ste 300	<input type="checkbox"/>	Overnight Mail
Logan, Utah 84321	<input type="checkbox"/>	Fax

Mr. Jeff Fox

RANDALL C. BUDGE

EXHIBIT "C"



196 South 4th Street
 Montpelier, Idaho 83254

Office (208) 847-3200
 Fax (208) 847-3203

Facsimile Transmittal Sheet

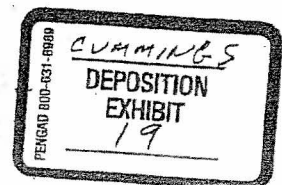
FROM: DOT

TO: Steve Cummings DATE: 7/26

FAX NUMBER 801 756 3150

NUMBER OF PAGES (INCLUDING COVER) 9

COMMENTS Stephen's Contract



Def NT Obj

1264



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

ID# ES070207 B DATE 7-2007

LISTING AGENCY Exit Realty of Bl Office Phone # _____ Fax # _____

Listing Agent Dorothy Ralls E-Mail _____ Phone # _____

SELLING AGENCY Exit Realty of Bl Office Phone # 207-3201 Fax # 207-3203

Selling Agent Evan Spence E-Mail _____ Phone # _____

1. BUYER: Three Bar Ranches Inc (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES" COMMONLY KNOWN AS Stobers Ranch City Monmouth Bear Lake County, ID, Zip _____ legally described as: See Addendum One

OR Legal Description Attached as addendum # _____ (Addendum must accompany original offer.)

2. \$700,000 PURCHASE PRICE: Seven Hundred Thousand DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

\$1000 (A). EARNEST MONEY: BUYER hereby deposits One Thousand DOLLARS as Earnest Money evidenced by: cash personal check cashier's check note (due date): _____ other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker other: _____ for the benefit of the parties hereto. The responsible Broker shall be _____

(B). ALL CASH OFFER: NO YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with "0" (ZERO.) IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

(C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing: FIRST LOAN of \$ _____ not including mortgage insurance, through FHA, VA, CONVENTIONAL, IHFA, RURAL DEVELOPMENT, OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

SECOND LOAN of \$ _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

LOAN APPLICATION: BUYER has applied shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____ business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER

FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees required by FHA or VA.

\$297,000 (D). ADDITIONAL FINANCIAL TERMS: Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4). Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties. Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.

\$202,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s) shall be adjusted at closing as shown in: Cash Other: _____

BUYER'S Initials (CS) Date 7/02/07 SELLER'S Initials (AL) (AL) Date 7-5-07

Copy

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 2 of 6 JULY, 2006 EDITION

PROPERTY ADDRESS: Stephens Ranch Hwy 30 ID#: RS070207B

4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing

Included in all available water from Bennington + mountaineer
Inspection of all available oil + mineral: 100 Shares of unperfected
of 900 shares of Bennington Trust.
EMPS TO stay with Lender for 2507 =

Property has not been surveyed Contingent upon Appraisal covering
a purchase price + home to be inspected & present in Buyer's appraisal.
Buyer to have option to do a 1031 exchange

5. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable. It is agreed that any item included in this section is of nominal value less than \$100.

(A) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Disc 4385, Tractor PVT.
Armoire, All furniture in home that seller wishes to leave.
All available wheel lines & all hand lines

(B) ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:

6. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

7. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.

(A) PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have _____ business day(s) from receipt of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within _____ business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B) TITLE COMPANY: The parties agree that Northern Title Title Company located at A. C. 2nd shall provide the title policy and preliminary report of commitment.

(C) STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILLINOIS Owner's Policy of Title Insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Closing Agency in writing and pay any increase in cost unless otherwise provided herein.

(D) EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the General Contractor Disclosure Statement.

BUYER'S Initials (JS) () Date 7/02/07 SELLER'S Initials (R.S. x B.S.) Date 7-5-07

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PROPERTY ADDRESS: St Stephens Kona ID# ESD0207B

8. INSPECTION:

(A) BUYER chooses to have inspection not to have inspection. If BUYER chooses not to have inspection skip section 9C. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 10 business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproved of items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B). FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 5 business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER'S inspection contingency.

3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 5 business days that they will not continue with the transaction and will receive their Earnest Money back.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. LEAD PAINT DISCLOSURE: The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of SELLER'S Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYER'S right to have the property tested for lead-based paint hazards to be completed no later than _____ or the contingency will terminate, (d) that BUYER hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property Disclosure Form" or other acceptable form prior to signing this Agreement: Yes No N/A

13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's. Yes No

14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions, BUYER has reviewed Homeowner's Association Documents: Yes No N/A Association fees/dues are \$ _____ per _____ BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$ _____ and/or property TRANSFER FEES of \$ _____ at closing.

15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

BUYER'S Initials (JS) Date 7/2/07 SELLER'S Initials (RS) Date 7-5-07

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PROPERTY ADDRESS: Stephens

ID#: ES070207 B

16. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ _____ of lender required repair costs only, BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

	BUYER	SELLER	Shared Equally	N/A		BUYER	SELLER	Shared Equally	N/A
Appraisal Fee	X				Title Ins. Standard Coverage Owner's Policy		X		
Appraisal Re-Inspection Fee				X	Title Ins. Extended Coverage Lender's Policy - Mortgagee Policy				X
Closing Escrow Fee			X		Additional Title Coverage				X
Lender Document Preparation Fee				X	Fuel in Tank - Amount to be Determined by Supplier				X
Tax Service Fee				X	Well Inspection				X
Flood Certification/Tracking Fee				X	Septic Inspections				X
Lender Required Inspections				X	Septic Pumping				X
Attorney Contract Preparation or Review Fee				X	Survey				X

17. OCCUPANCY: BUYER does does not intend to occupy property as BUYER'S primary residence.

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the premises approximately _____ calendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) Sept 1, 07

The parties agree that the CLOSING AGENCY for this transaction shall be Northern Title located at M. L. L. If a long-term escrow / collection is involved, then the long-term escrow holder shall be _____

21. POSSESSION: BUYER shall be entitled to possession upon closing or date _____ time _____ A.M. P.M. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of Closing Date.

22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

BUYER'S Initials (JS) Date 7/02/07 SELLER'S Initials (R.D. X B.L.) Date 7-5-07

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 5 of 6 JULY 2006 EDITION

PROPERTY ADDRESS: Stephen's Ranch

ID#: LS070207B

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: in the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled:

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
- D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials (GS) () Date 7/02/07 SELLER'S Initials (ML) (HL) Date 7-2-07

Def NT Obj

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 of 6 JULY 2006 EDITION

PROPERTY ADDRESS: Stephens Ranch ID#: ES070207B

32. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supercedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) July 16, 07 at (Local Time) in which property is located) 5 A.M. P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

36. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

BUYER Signature Three - Bob Banks, Jr BUYER (Print Name) _____
Date 7/16/07 Time 11:28 A.M. P.M. Phone # _____ Cell # _____
Address _____ City _____ State _____ Zip _____
E-Mail Address _____ Fax# _____

BUYER Signature _____ BUYER (Print Name) _____
Date _____ Time _____ A.M. P.M. Phone # _____ Cell# _____
Address _____ City _____ State _____ Zip _____
E-Mail Address _____ Fax# _____

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

SELLER Signature _____ SELLER (Print Name) _____
Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
Address 436 W Coplestone Dr City Flomicon State Wisc Zip 84332
E-Mail Address _____ Fax# _____

SELLER Signature _____ SELLER (Print Name) _____
Date _____ Time _____ A.M. P.M. Phone # _____ Cell # _____
Address _____ City _____ State _____ Zip _____
E-Mail Address _____ Fax# _____

CONTRACTOR REGISTRATION # (if applicable) _____

1270

Not NT Ok!



RE- 13 COUNTER OFFER # 012 (1, 2, 3, etc.)



THIS COUNTER OFFER SUPERCEDES ALL PRIOR COUNTER OFFERS

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is a COUNTER OFFER to the Purchase and Sale Agreement Dated: 7-2-07
2 ADDRESS: STEPHENS KAWAH ID# _____
3 BUYER: _____
4 SELLER: STEPHENS FAMILY TRUST

5 The parties accept all of the terms and conditions in the above-designated Purchase and Sale Agreement with the following changes:
6 This is a SELLER counter offer. The SELLER reserves the right to withdraw this offer or accept any other offers prior to the receipt of a
7 true copy of signed acceptance of this Counter Offer within the time frame specified herein.
8 This is a BUYER counter offer. The undersigned BUYER reserves the right to withdraw this offer at any time prior to the receipt of a true
9 copy of signed acceptance of this Counter Offer within the time frame specified herein.

10 PURCHASE PRICE \$ 800,000 EIGHT HUNDRED THOUSAND DOLLARS
11 DOWN PAYMENT 1/3 OF \$800,000 (\$ 266,667)
12 CARRY BALANCE OF \$ 533,333 ON 10 YEAR CONTRACT AT 8 1/2% INTEREST
13 EARNEST MONEY DOWN \$ 3,000
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____

25 3%
26 28,000 - 50,000.

27 To the extent the terms of this Counter Offer modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
28 Addendums, the terms in this Counter Offer shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums
29 not modified by this Counter Offer shall remain the same. Buyer and Seller acknowledge the down payment and/or loan amount on
30 Page 1 of Purchase & Sale Agreement may change if purchase price is changed as part of this Counter Offer. Upon its execution by
31 both parties, this agreement is made an integral part of the aforementioned Agreement.
32

33 If a signed acceptance is not delivered on or before (date): 7.18.07 at 5:00 AM / PM, this Counter
34 Offer shall be deemed to have expired.
35

36 DELIVERY: Delivery shall be to the agent/broker working with the maker of the Counter Offer in person, by mail, facsimile or electronic
37 transmission of any signed original document, and retransmission of any signed original document. Retransmission of any signed facsimile
38 or electronic transmission shall be deemed to be the same as delivery of an original.
39

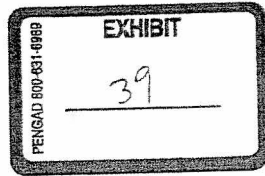
40 SELLER Edward Stephens FOR Roger Stephens Date 7.9.07 Time 5:00 AM / PM
41 SELLER _____ Date _____ Time _____ AM / PM
42 BUYER Frankie Lamb, Jr. Date 7/11/07 Time 1:47 AM / PM
43 BUYER [Signature] Date _____ Time _____ AM / PM

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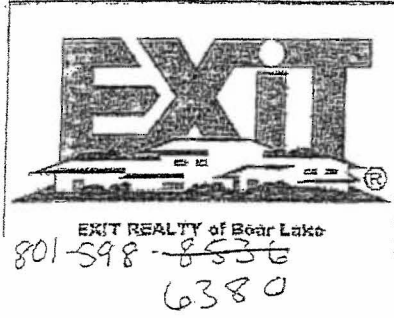
Def NT Obj

1271

317-7469



Evan Skinner
#1 CHOICE



e mail- EA homes @ people
PC.com

196 South 4th Street
Montpelier, Idaho 83254
Office: (208)-847-EVAN
Cell: (208) 317-6310
Office: (208) 847-3200
Fax: (208) 847-3203

Email: skiev1@gmail.com

Http://www.evanskinner.com

got it?
now sending back Fax
call or on cell when u
send it

Facsimile Transmittal Sheet

FROM: Evan Skinner

TO: Steven ~~Stephen~~ DATE: 7-25-07

FAX NUMBER 801-756-3150

NUMBER OF PAGES (INCLUDING COVER) _____

COMMENTS Please initial + Date
where X'd + or sign + Date
+ Fax Back A.S.A.P or email Back +
Let me know when you send it Back
so I will know

Cell # 208-317-6310

Title co. said we can close By next Wed.
Do you want to come up or should
we send the papers to you?

Def NT Obj

1272



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 ID# ES072607 DATE July 25, 07
2
3 LISTING AGENCY NOT LISTED Office Phone # _____ Fax # _____
4 Listing Agent _____ E-Mail _____ Phone # _____
5 SELLING AGENCY Exit Realty of Bear Lake Office Phone # 208-847-3200 Fax # 208-847-3203
6 Selling Agent EVAN SKINNER E-Mail _____ Phone # 847-3010

7
8 1. BUYER: STEVEN CUMMINGS (Hereinafter called
9 "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"
10 COMMONLY KNOWN AS _____ City MONTPELIER
11 _____ County, ID, Zip 83254 legally described as: _____

12 OR Legal Description Attached as addendum # ONE (Addendum must accompany original offer.)

13
14 2. \$ 850,000 PURCHASE PRICE: Eight Hundred Fifty Thousand DOLLARS,
15 payable upon the following TERMS AND CONDITIONS (not including closing costs):

16 3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

17
18 \$ 3,000 (A). EARNEST MONEY: BUYER hereby deposits Three Thousand DOLLARS as
19 Earnest Money evidenced by: cash personal check cashier's check note (due date): To Be Sent in mail 7-26-07
20 other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited
21 in trust account upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker
22 other _____ for the benefit of the parties hereto. The responsible Broker shall be Ryan Olson

23
24 1031 (B). ALL CASH OFFER: NO YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with
25 "0" (ZERO). IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY.
26 BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of
27 sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or
28 financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

29
30 \$ N/A (C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:
31 FIRST LOAN of \$ _____ not including mortgage insurance, through FHA, VA, CONVENTIONAL, IHFA,
32 RURAL DEVELOPMENT, OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate
33 Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s).
34 Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

35
36 SECOND LOAN of \$ _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate
37 Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any
38 reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

39
40 LOAN APPLICATION: BUYER has applied shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____
41 business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of
42 credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender
43 underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this
44 agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does
45 not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval
46 and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required
47 by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER
48 may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are
49 fulfilled, and the new loan does not increase the costs or requirements to the SELLER

50
51 FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the
52 purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in
53 accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct
54 Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees
55 required by FHA or VA.

56
57 \$ _____ (D). ADDITIONAL FINANCIAL TERMS:
58 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
59 Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.
60 Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.

61
62 \$ 847,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing
63 to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any
64 of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s)
65 shall be adjusted at closing of escrow in: Cash Other: _____

66
67 BUYER'S Initials (_____) (_____) Date 7-26-07 SELLER'S Initials (_____) (_____) Date _____

Def NT Obj 1273

PAGE 3 OF 6 PAGES - RE-21 PURCHASE & SALES AGREEMENT

PROPERTY ADDRESS: ST Johns Ranch ID#: PS072607

69 5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies
70 which must be satisfied prior to closing Buyer + Sellers understands we are doing

71 a 1031 exchange. Also we are doing simultaneous closings
72 between Three Bar Ranch Inc + Mr. Edgie Stephens and
73 them between Three Bar Ranch Inc + Steven Cummings

74 See Addendum TWO
75 6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE
76 PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached
77 television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows,
78 storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached
79 fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment,
80 all water systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the
81 premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the price and condition of the property
82 are acceptable. It is agreed that any item included in section 6 is of nominal value less than \$100.
83
84

85 (A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: 900 shares of Bennington
86 Jurisdiction - and 100 shares of Mountain Tractor - out of state disc -
87 4385 International Tractor - Awnings and all furniture the
88 seller leaves and all sprinkler equipment + hand tools

89 (B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: Renters personal equipment
90 and items in the home that the seller wishes to keep.

91 7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except
92 for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental
93 unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase
94 money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist
95 unless otherwise specified in this Agreement.

96 8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are
97 advised to talk to a title company about any other coverages available.

98 (A). TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a commitment of a title insurance policy
99 showing the condition of the title to said premises. BUYER shall have business day(s) from receipt of the commitment or not fewer than twenty-four (24)
100 hours prior to closing, within which to object in writing to the condition of the title as set forth in the commitment. If BUYER does not so object, BUYER shall be
101 deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within business
102 day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER
103 shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

104 (B). TITLE COMPANY: The parties agree that Northern Title Company located at N. 4th Montpelier
105 shall provide the title policy and preliminary report of commitment.

106 (C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the
107 amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this
108 Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage
109 policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Homeowner's Policy of Title Insurance. A title company, at BUYER's
110 request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER
111 desires title coverage other than that required by this paragraph, BUYER shall instruct Escrow Holder in writing and pay any increase in cost unless otherwise
112 provided herein.

113 (D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage
114 Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the
115 public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

116 9. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that,
117 subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights
118 afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor
119 information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding
120 \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the
121 purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to
122 obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the
123 General Contractor Disclosure Statement.

BUYER'S initials _____ BUYER and SELLER acknowledge receipt of copy of this page, which constitutes PAGE 2 of 6 PAGES
Date 7-26-07 Date _____
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Def NT Obj 1274

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 6 JULY, 2005 EDITION

PROPERTY ADDRESS: Stephens Ranch 1- of Montpelier ID# FS022607

9. INSPECTION:

(A). BUYER chooses to have inspection not to have inspection. If BUYER chooses not to have inspection skip lines 165 to 167. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproved of items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B). FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD S2564-CN must be signed on or before execution of this agreement

(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved of items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYERS inspection contingency.

3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within business days that they will not continue with the transaction and will receive their Earnest Money back.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. LEAD PAINT DISCLOSURE: The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of Seller's Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than or the contingency will terminate, (d) that BUYER hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property Disclosure Form" or other acceptable form prior to signing this Agreement: Yes No N/A

13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's. Yes No N/A

14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions, BUYER has reviewed Homeowner's Association Documents: Yes No N/A Association fees/dues are \$ per BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$ and/or property TRANSFER FEES of \$ at closing.

15. "NOT APPLICABLE DEFINED:" The letters "n/a," "NA," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

BUYER'S Initials Date 07-26-07 SELLER'S Initials Date

Def NT Obj

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 4 of 6 JULY, 2005 EDITION

PROPERTY ADDRESS: Stephens Ranch ID#: FS072607

16. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ 9 of lender required repair costs only. BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

	BUYER	SELLER	Shared Equally	N/A		BUYER	SELLER	Shared Equally	N/A
Appraisal Fee				X	Title Ins. Standard Coverage Owner's Policy		X		
Appraisal Re-Inspection Fee				X	Title Ins. Extended Coverage Lender's Policy - Mortgagee Policy				X
Closing Escrow Fee			X		Additional Title Coverage				X
Lender Document Preparation Fee				X	Fuel in Tank - Amount to be Determined by Supplier				X
Tax Service Fee				X	Well Inspection				X
Flood Certification/Tracking Fee				X	Septic Inspections				X
Lender Required Inspections				X	Septic Pumping				X
Attorney Contract Preparation Fee				X	Survey				X

17. OCCUPANCY: BUYER does does not intend to occupy property as BUYER'S primary residence.

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the premises approximately ___ calendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) Aug 3, 07.

The parties agree that the CLOSING AGENCY for this transaction shall be Northern Title located at 112th Montpelier. If a long-term escrow / collection is involved, then the long-term escrow holder shall be _____

21. POSSESSION: BUYER shall be entitled to possession upon closing or date See Addendum 2 time _____ A.M. P.M. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of closing date.

22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

BUYER'S Initials ([Signature]) Date 07-26-07 SELLER'S Initials (_____) (_____) Date _____

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 OF 6 JULY 2005 EDITION
PROPERTY ADDRESS: Stephens Ranch 1- of Montpelier ID# ES022607

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the 319 brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

- Section 1:
- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
 - B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
 - C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
 - D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

- Section 2:
- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
 - B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
 - C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
 - D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials () Date 07-26-07 SELLER'S Initials () Date

Def NT Obj 1277

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 of 6 JULY 2005 EDITION

PROPERTY ADDRESS: Stephens Ranch ID# ES072607

32. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) July 28, 07 at (Local Time in which property is located) 5:30 A.M. P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

36. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

BUYER Signature _____
Date 7-26-07 Time _____ A.M. P.M.
Address _____
E-Mail Address _____

BUYER (Print Name) STEVEN B. CURRIE
Phone # _____ Cell # 801-598-6370
City AF State UT Zip 84002
Fax# _____

BUYER Signature _____
Date _____ Time _____ A.M. P.M.
Address _____
E-Mail Address _____

BUYER (Print Name) _____
Phone # _____ Cell # _____
City _____ State _____ Zip _____
Fax# _____

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER
 SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # 1+2

SELLER Signature _____
Date _____ Time _____ A.M. P.M.
Address _____
E-Mail Address _____

SELLER (Print Name) _____
Phone # _____ Cell # _____
City _____ State _____ Zip _____
Fax# _____

SELLER Signature _____
Date _____ Time _____ A.M. P.M.
Address _____
E-Mail Address _____

SELLER (Print Name) _____
Phone # _____ Cell # _____
City _____ State _____ Zip _____
Fax# _____

CONTRACTOR REGISTRATION # (if applicable) _____

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 of 6 JULY 2005 EDITION

Def NT Obj

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"EXHIBIT A"

Addendum One

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 2.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 33' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 6.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 59 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 30 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL BASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Initial 

RE-11 ADDENDUM JULY 2006 EDITION PAGE 1 OF 1



RE-11 ADDENDUM # TWO (1,2,3, etc.)



Date: July 25.07

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is an ADDENDUM to the Purchase and Sale Agreement.
2 ("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used
3 to change, correct or revise the agreement (such as modification, addition or deletion of a term)).
4

5 PURCHASE AND SALE AGREEMENT DATED: July 25.07 ID# FS072607
6 ADDRESS: Stephens Ranch
7 BUYER(S): Steven Cummings
8 SELLER(S): Three Bar Ranch - Inc.

9 The undersigned parties hereby agree as follows:

- 10
- 11 1. Included is all available oil + mineral
- 12
- 13 2. CRODS TO STAY THE LESSEE FOR 2007. BUYER
- 14 TO HAVE POSSESSION OF THE HOME + SHED AT CLOSING
- 15
- 16 3. Buyer TO purchase property in AS IS condition
- 17
- 18 4. Property has NOT Been Surveyed.
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31

32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
33 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior
34 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this
35 agreement is made an integral part of the aforementioned Agreement.

36 BUYER: [Signature] Date: 7-26-07

37

38 BUYER: _____ Date: _____

39 SELLER: _____ Date: _____

40 SELLER: _____ Date: _____

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CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B heretofore, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed insured and such parties included under the definition of insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at: <http://www.atta.org>.



All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

Closing/Escrow inquiries to:
LONI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA PAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTEL-1133

- 1. Effective Date: May 30, 2007 @ 5:00 PM
- 2. Policy or policies to be issued:

A. ALTA Owner's (5/17/06) Standard Coverage
 Proposed Insured: THREE BAR RANCHES, INC.
 Amount: \$800,000.00
 Premium: \$2,330.00

B. ALTA Loan (5/17/06) Coverage
 Proposed Insured:
 Amount: \$0.00
 Premium: \$0.00

C. Endorsements: \$0.00

3. The estate or interest in the land described in the Commitment and covered herein is:
FREE SIMPLE

4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST

5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS: BEAR LAKE COUNTY

"EXHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

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COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 89 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 59 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

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A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

SCHEDULE B - SECTION II

Order No. NTBL-1183

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.*
- (2) Any facts, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.*
- (3) Easements, claims of easement or encumbrances which are not shown by the public records.*
- (4) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.*
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.*
- (6) Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by public records.*

*Paragraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section II.

(See Special exceptions beginning on the next page)

SCHEDULE B - SECTION II

Order No. NTRL-1183

SPECIAL EXCEPTIONS:

1. Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$183.54.
Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$1,134.00.
Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$135.10.
Tax Serial No. 3168
2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL BASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
5. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 30

RECORDED:	MAY 22, 1956
INSTRUMENT NO.:	71884
RECORDED:	AUGUST 1, 1956
INSTRUMENT NO.:	72172
RECORDED:	SEPTEMBER 20, 1956
INSTRUMENT NO.:	72343
RECORDED:	NOVEMBER 15, 1960
INSTRUMENT NO.:	79310

(Continued)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

7. An Easement for the purpose shown below and rights incidental thereto as set forth in a document

Granted to:	UTAH POWER AND LIGHT COMPANY
Purpose:	Public Utilities Easement
Dated:	SEPTEMBER 5, 1957
Recorded:	FEBRUARY 28, 1958
Entry No.:	74487 & 74488

8. RIGHT OF WAY OPTION

RECORDED:	AUGUST 21, 1973
INSTRUMENT NO.:	101374

9. OIL AND GAS LEASE

RECORDED:	FEBRUARY 11, 1976
INSTRUMENT NO.:	107445

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED:	JULY 8, 1976
INSTRUMENT NO.:	108991

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED:	JUNE 24, 1977
INSTRUMENT NO.:	112523

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED:	JULY 18, 1977
INSTRUMENT NO.:	112668

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED:	DECEMBER 9, 1977
INSTRUMENT NO.:	113901

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED:	DECEMBER 28, 1977
INSTRUMENT NO.:	114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED:	AUGUST 13, 1980
INSTRUMENT NO.:	122412

(Continued)

SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:**RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY**RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124223**ASSIGNMENT OF OIL AND GAS LEASE**RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124224**10. RIGHT OF WAY BASEMENT**RECORDED: MAY 26, 1914
INSTRUMENT NO.: 10835, 10836, 10837 & 10838**11. OFFICIAL MINUTES**RECORDED: MARCH 7, 1997
INSTRUMENT NO.: 166238

NOTE: The policy of title insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its insurance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC.
ROGER L. STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction fails to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

Barbara Baud
Examiner

NTBL-1183

COMMITMENT FOR TITLE INSURANCE

**SCHEDULE B-SECTION 1
REQUIREMENTS**

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

(a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to insured.

(b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.

(c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the issuance of any policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any items herein below.

In addition to the foregoing, the following requirements must be complied with, to-wit:

1. PURCHASE AND SALE AGREEMENT.
2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
5. THREE BAR RANCHES, INC. NEEDS TO RENEW ARTICLES OF INCORPORATION WITH THE STATE OF UTAH.

EXHIBIT "D"

Brad H. Bearson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
Telephone: (435) 752-6300
Facsimile: (435) 752-6301
bbearson@bearsonlaw.com
abergman@bearsonlaw.com

Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X.)
)
Defendants.)
_____)

Case No. CV-09-183

**SECOND AFFIDAVIT OF LORI
THORNOCK**

STATE OF IDAHO)
) : ss.
County of Bear Lake)

LORI THORNOCK, being first duly sworn on oath, deposes and states as follows:

1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.
2. I have personal knowledge of the real estate transaction between Roger L. Stephens and Steven Cummings, subject of this action, and the matters stated herein.

SECOND AFFIDAVIT OF LORI THORNOCK - Page 1
Case No. CV-09-183

3. I am currently an employee of Northern Title Company of Idaho, Inc. ("Northern Title) and have been employed there since July 27, 2006. During that time I acted as the office manager of the Montpelier, Idaho office of Northern Title.

4. On or about July 31, 2007, Northern Title issued the initial title commitment on the Roger Stephens' property for sale. A few days later, a revised title commitment was issued. However, these preliminary title commitments were not intended for Mr. Cummings. Rather, each specifically named the proposed insured: "THREE BAR RANCHES, INC."

5. Additionally, at no time has Northern Title agreed to act as an abstractor of title for Mr. Cummings. Rather, Northern Title agreed to insure certain property and to act as escrow holder for purpose of payments and document handling.

6. When Roger Stephens contacted me on or about November 8, 2007, I was very surprised to hear that the warranty deed erroneously included property on the east of Highway 30.

7. In the course of the transaction, Northern Title's contact was limited to the realtors, Dorothy Julian and Evan Skinner. I have not yet been introduced to Mr. Cummings. Both Ms. Julian and Mr. Skinner indicated that Mr. Stephens intended only to sell property west of Highway 30. This was my understanding from the very beginning.

8. The reason for re-recording the existing warranty deed was not to change the transaction between Mr. Stephens and Mr. Cummings, but to conform the warranty deed to what I always understood to be the intent of the Real Estate Purchase Contract.

9. When I re-recorded the deed, I was acting according to my express duties as escrow holder. Northern Title was designated as the closing agent, and held certain

responsibilities as such. One of those duties included the making of clerical corrections to ensure that the warranty deed conformed to the intent of the Real Estate Purchase Contract.

10. In conjunction with the above understanding, it was always Northern Title's intent to include in the legal description and thereafter insure Cummings only for property lying west of Highway 30. This was clear to me through my discussions with the realtors, previous attempts to correct clerical errors in title commitments issued to Three Bar Ranches, Inc. and through my evaluation of the plat maps.

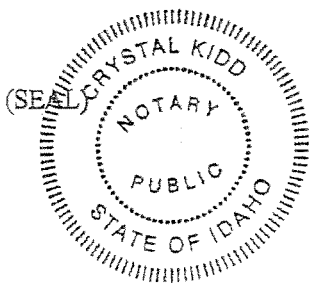
11. At the time of the re-recording, Northern Title had not issued Mr. Cummings any title insurance policy. The reason is that Cummings initially indicated he wanted the deed transferred into trust. It was therefore initially uncertain who would be the insured. Once it was understood that no trust would be utilized, Northern Title issued Mr. Cummings an Owner's Policy of Title Insurance, dated April 9, 2008.

FURTHER SAITH AFFLIANT NAUGHT.

Dated this 24th day of May, 2012.


LORI THORNOCK

SUBSCRIBED AND SWORN TO before me this 24 day of May, 2012.



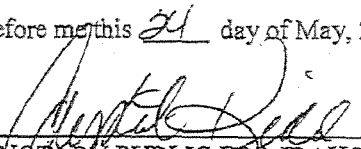

NOTARY PUBLIC FOR IDAHO
Residing at: Montpelier
My Commission Expires: 3-18-2016

EXHIBIT "E"

Randall C. Budge (ISB No. 1949)
 Mark S. Shaffer (ISB No. 7559)
 RACINE, OLSON, NYE, BUDGE &
 BAILEY, CHARTERED
 P.O. Box 1391; 201 E. Center Street
 Pocatello, Idaho 83204-1391
 Telephone: 208-232-6101
 Facsimile: 208-232-6109
rcb@racinelaw.net

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
 residing in Montana,)
)
 Plaintiff,)
)
 vs.)
)
 ROGER L. STEPHENS, an individual)
 residing in Providence, Utah, JOHN DOES)
 I-X.)
)
 Defendants.)

Case No. CV-09-183

AFFIDAVIT OF EVAN SKINNER

STATE OF IDAHO)
 : ss.
 County of Bear Lake)

EVAN SKINNER, being first duly sworn on oath, deposes and states as follows:

1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.

2. I am currently a real estate agent with RE/MAX in Montpelier, Idaho. As a real estate agent, I hold myself out to the public as an "Idaho-Utah-Wyoming Farm and Ranch Specialist".

3. I have sold ranches in the Bear Lake Valley for 14 years and am very familiar with the various ranches located in the Bear Lake Valley. I am not guessing when I tell clients information about boundaries.

4. In July of 2007 I was working as a real estate agent for Exit Realty of Bear Lake.

5. In July of 2007 I was asked by Dorothy Julian-Ralls, then a real estate agent for Exit Realty of Bear Lake, to help her show Steven Cummings some properties in Montpelier, Idaho and the surrounding areas.

6. At approximately the end of July 2007 I showed Steven Cummings several properties in Montpelier and the surrounding areas. Steven Cummings drove his motor home and followed my vehicle as we viewed each property.

7. One of the properties I showed Steven Cummings was the Roger Stephens ranch property on the west side of Highway 30 located north of Montpelier ("Stephens Property"). To get to the Stephens Property I drove on North 8th Street, which is west of Highway 30. I showed Mr. Cummings where the Stephens Property started from North 8th Street and we then went to the main residence located on the Stephens Property.

8. While at the Stephens Property I explained to Steven Cummings that the Stephens Property was under contract, but that the buyer, Three Bar Ranches, Inc. ("Three Bar Ranches") may be willing to sell its position if it could make more than what it was going to have to pay for the Stephens Property. I also told Steven Cummings that the Stephens Property was approximately 270

acres, but that the acreage I told him was only an estimate and we received our information from the Bear Lake County records. I also explained to Steven Cummings that the Stephens Property had not been surveyed, and that the Stephens Property had been part of a larger tract of land but that the property located on the east side of Highway 30 was not part of the sale.

9. I explained to Steven Cummings that if he decided to purchase the Stephens Property we would need to have Three Bar Ranches assign its interest over to Steven Cummings as the second buyer.

10. After I showed Steven Cummings the Stephens Property, I spoke to Curtis Baum, a representative of Three Bar Ranches, and he agreed to sell Three Bar Ranches' interest in the purchase of the Stephens Property for a profit of approximately \$50,000.00.

11. I gave Steven Cummings a copy of the Purchase and Sale Agreement that was entered into between Three Bar Ranches and Roger and Barbara Stephens.

12. I told Steven Cummings several times prior to his purchase of the Stephens Property that the portion of the Stephens Property for sale was only the land on the west side of Highway 30.

13. I personally showed Steven Cummings both in person and on a map that the Stephens Property that was for sale consisted of approximately 270 acres and was only the land on the west side of Highway 30.

14. I, on behalf of Exit Realty of Bear Lake, provided Steven Cummings with a Buyer Due Diligence Checklist, which Steven Cummings initialed and signed on July 26, 2007. A true and correct copy of the Buyer Due Diligence Checklist is attached hereto as Exhibit "1", incorporated herein by reference as if set forth fully.

15. The Buyer Due Diligence Checklist signed by Steven Cummings specifically states that "[i]f the square footage or acreage of the Property is of material concern to buyer, buyer is advised to verify the square footage or acreage through any independent sources or means deemed appropriate by Buyer. . . . Buyer is advised not to rely on seller, the Company, or any agents of the Company for a determination regarding the square footage or acreage of the Property." Ex. "1", section 9.

16. It is my opinion that Steven Cummings's purchase of the approximately 270 acres of the Stephens Property was an excellent buy. In fact, I still had people looking to purchase property at the price Steven Cummings paid for the Stephens Property over a year after Steven Cummings's purchase of the Stephens Property, even when the real estate market in the Bear Lake Valley had become substantially depressed as a result of the recent downturn in the economy.

FURTHER SAITH AFFIANT NAUGHT.

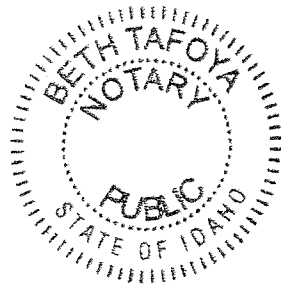
Dated this 23 day of February 19, 2010.

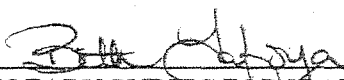


EVAN SKINNER

SUBSCRIBED AND SWORN TO before me this 23 day of February, 2010.

(SEAL)





NOTARY PUBLIC FOR IDAHO
Residing at: Montpelier, ID.
My Commission Expires: 10-31-2012

EXHIBIT "F"

Randall C. Budge (ISB No. 1949)
Mark S. Shaffer (ISB No. 7559)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
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Telephone: 208-232-6101
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Brad H. Bearnson
Bearnson & Peck, L.C.
399 North Main, Ste 300
Logan, Utah 84321

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X.)
)
Defendants.)
_____)

Case No. CV-09-183

AFFIDAVIT OF DOROTHY JULIAN

STATE OF IDAHO)
 : ss.
County of Ada)

DOROTHY JULIAN, being first duly sworn on oath, deposes and states as follows:

Def NT Obi

1. I am a United States citizen. I am over 21 years of age and competent to testify regarding the facts and matters stated herein, which are based on my personal knowledge.

2. In 2007 I was a real estate agent for Exit Realty of Bear Lake.

3. In 2007 I was the listing agent of the Roger L. and Barbara L. Stephens Family Trust property located on the west side of Highway 30 north of Montpelier ("Stephens Property").

4. As the listing agent of the Stephens Property, I worked with Roger L. Stephens to determine what property the Roger L. and Barbara L. Stephens Family Trust desired to sell. Roger L. Stephens informed me that the Roger L. and Barbara L. Stephens Family Trust owned property located both east and west of Highway 30. I was instructed by Roger L. Stephens that the Stephens Property for sale was to include only the property located west of Highway 30.

5. On or about July 31, 2007, I received a copy of the Commitment for Title Insurance on the Stephens Property, referenced as Order No. NTBL-1183 ("Title Commitment"), from Northern Title Company of Idaho ("Northern Title"). The Title Commitment contained a plat map with arrows indicating that the property involved included only real property located west of Highway 30. A true and correct copy of the Title Commitment is attached hereto as Exhibit "1" and incorporated herein by reference.

6. Shortly after receiving the Title Commitment, I contacted Northern Title to confirm that the Title Commitment (and thus the property for sale by the Stephens Family Trust) only included property located west of Highway 30. Northern Title verbally confirmed to me that the Title Commitment only included property located west of Highway 30.

7. Sometime after that but before the August 3, 2007 closing, I received a second copy of the Commitment for Title Insurance on the Stephens Property, referenced as Order No. NTBL-

1183 ("Second Title Commitment"), from Northern Title. The Second Title Commitment contained a plat map with arrows indicating that the property involved included only real property located west of Highway 30. A true and correct copy of the Second Title Commitment is attached hereto as Exhibit "2" and incorporated herein by reference.

8. As the listing agent for the Stephens Property, I had my phone number listed on the sales sign. At approximately the end of July 2007, I received a phone call from Steven Cummings, who had been driving around the area and saw the sign by the residence located on the Stephens Property.

9. I indicated to Stephen Cummings that the Roger L. and Barbara L. Stephens Family Trust owned properties located both east and west of Highway 30, that Highway 30 split the land owned by the Roger L. and Barbara L. Stephens Family Trust, and that only the land located to the west of Highway 30 was for sale.

10. I indicated to Steven Cummings that the property surrounding the residence to the west of Highway 30 was approximately 278 acres. I also indicated to Steven Cummings that the property for sale located west of Highway 30 included the residence, all barns and sheds, 900 water shares of Bennington gravity flow water, and 100 water shares of Montpelier water.

11. I also told Steven Cummings that the purchase price of the Stephens Property had been reduced to \$800,000, that the property was currently under lease by the Phelps brothers from Bennington, and that there was currently an offer on the Stephens Property but that anyone with any interest should consider a backup offer.

12. I then met Steven Cummings at the office of Exit Realty of Bear Lake and again drove him to the Stephens Property. While at the Stephens Property, I showed Steven Cummings the

residence located on the Stephens Property and emphasized that no property on the east of Highway 30 was included in the sale of the Stephens Property.

13. After showing Steven Cummings the Stephens Property, I drove Steven Cummings back to the office of Exit Realty of Bear Lake and we met with Evan Skinner (another real estate agent at Exit Realty of Bear Lake). I then accompanied Evan Skinner in his truck as he drove Steven Cummings around the Stephens Property and showed Steven Cummings the areas of the Stephens Property that were not accessible using my car. During this visit Evan Skinner and I emphasized to Steven Cummings, both verbally and with the use of a map, that the Stephens Property for sale was located only on the west side of Highway 30.

14. As the listing agent of the Stephens Property, I gave each potential buyer of the Stephens Property certain documentation describing the specifics of the Stephens Property. The documentation included a copy of a map from the USDA Farm Service Agency displaying the land for sale (all on the west side of Highway 30). A true and correct copy of the map from the USDA Farm Service Agency is attached hereto as Exhibit "3" and incorporated herein by reference. I gave Steven Cummings a copy of the map from the USDA Farm Service Agency and again indicated to Steven Cummings that the Stephens Property for sale was all located west of Highway 30.

FURTHER SAITH AFFIANT NAUGHT.

Dated this 20 day of September, 2010.



DOROTHY JULIAN

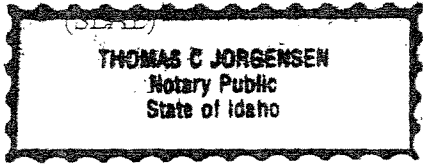
SUBSCRIBED AND SWORN TO before me this 20 day of September, 2010.



NOTARY PUBLIC FOR IDAHO

Residing at: US Bank

My Commission Expires: Aug 7, 2014



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of September, 2010, I served a true and complete copy of the foregoing document on the following persons in the manner indicated:

Nathan M. Olsen
Beard, St. Clair, Gaffney PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495

U.S. Mail/Postage Prepaid
 Hand Delivery
 Overnight Mail
 Fax

Brad H. Bearnson
Bearnson & Peck, L.C.
399 North Main, Ste 300
Logan, Utah 84321

U.S. Mail/Postage Prepaid
 Hand Delivery
 Overnight Mail
 Fax

RM Budge

RANDALL C. BUDGE

EXHIBIT "G"

ESCROW GENERAL PROVISIONS

This agreement governs the duties and obligations between Northern Title Company of Idaho (hereinafter "Escrow Agent") and the undersigned signatories, who are parties to the following transaction.

Order No.: NTBL-1183

Address: MONTEPLIER, ID

Buyer(s): STEVEN B. CUMMINGS,

Seller(s): ROGER L. STEPHENS TRUSTEE and BARBARA L. STEPHENS TRUSTEE TRUST

The Parties understand and acknowledge:

1. Escrow Agents Role

Subject to the terms of this agreement, Escrow Agent agrees to act as an escrow agent in closing the transaction described above. Escrow Agent is not the agent of any single party. Rather, Escrow Agent agrees to prepare documents, secure the execution of documents, record documents, disburse funds, and otherwise close the transaction in the accordance with the joint directions of the parties. Escrow Agent has no other duties or obligations. In particular, Escrow Agent does not give and has no duty to give legal or other advice to the parties.

2. Parties' Role

The parties authorize Escrow Agent to close the transaction, record documents, disburse funds, and otherwise act in accordance with the written Settlement Statement and any written or oral directions or agreements given to Escrow Agent by the parties or their representatives. The parties agree that Escrow Agent is entitled to act on the direction of the realtor, attorney or other person who has dealt with Escrow Agent on behalf of them in this transaction. If any party wishes to limit the authority of those who have dealt on their behalf with Escrow Agent, any such limitation must be contained in a writing that is delivered to Escrow Agents. *The parties agree that they are not looking to Escrow Agent for legal or other advice, and that they had an opportunity to obtain such advice from persons other than those affiliated with Escrow Agent.*

3. Closing Documents

The parties have been given an opportunity to review all documents at closing and to seek independent advice or counsel concerning those documents, if desired. The parties agree that the only representations of Escrow Agent upon which they are entitled to rely or act are those that are in writing and executed by Escrow Agent and that the parties are not entitled to act or rely on conflicting oral or written terms or directions given to Escrow Agent prior to closing. The parties' execution and delivery of documents at closing shall, as between Escrow Agent and the parties, constitute the parties' agreements and directions to Escrow Agent whether or not Escrow Agent is a party to the documents. The terms of this paragraph shall not affect the parties' rights between themselves.

4. Deposit of Funds. Recording & Disbursements

The undersigned **BUYER** and **SELLER** hereby approve the foregoing statement and authorize **NORTHERN TITLE COMPANY OF IDAHO** to complete the transaction in accordance herewith. The instruments may be delivered or recorded and funds disbursed. Escrow Agent shall place all funds received in escrow into a federally insured depository account specifically designated as a trust account. Escrow Agent may maintain a general trust account and individual accounts for specific escrows, subject to any specific terms and conditions of any written agreement between Buyer, Seller, and Escrow Agent. Absent specific written direction from both Seller and Buyer, Escrow Agent shall, as agent for Buyer and Seller, determine the identity of the depository institution. Escrow Agent shall not be responsible for any loss of funds occurring as a result of failure of the institution in which funds have been deposited, so long as Escrow Agent complies with the foregoing provisions relating to the type of depository institutions and accounts to be used. Earnings on funds held in Escrow Agent's escrow trust account shall be owned by and periodically disbursed to Escrow Agent as additional consideration for services actually performed by Escrow Agent. Funds may be paid from trust accounts only in accordance with the terms and conditions of Buyer's and Seller's instructions to Escrow Agent. In the event that Escrow Agent initiates or is joined as a party to any litigation relating to this escrow, Buyer and Seller jointly and severally agree to pay all costs, expenses and attorney's fees incurred by Escrow Agent in such litigation. Escrow Agent shall be entitled, at its option, to be paid such costs, expenses and the attorney's fees from the funds deposited by the party(ies) with Escrow Agent.

5. Disclosure of Possible Benefits to Escrow Agent

As a result of Escrow Agent maintaining its general escrow accounts with the depositories, Escrow Agent may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from depositories ("collateral benefits"). All collateral benefits shall accrue to the sole benefit of Escrow Agent and Escrow Agent shall have obligation to account to the parties to this escrow for the value of any such collateral benefits.

6. Miscellaneous Fees

The Settlement Statement may prescribe that certain release or reconveyance fees are payable to Escrow Agent. These fees are payable to Escrow Agent to compensate it for facilitating and arranging for the reconveyance or release of the encumbrance in question and are payable in the amounts indicated irrespective of whether additional reconveyance fees or charges may have been paid or are payable to any other party and irrespective of any limitation on reconveyance or release fees that may be prescribed. Escrow Agent may incur certain additional costs of behalf of the parties for services performed by third party providers. The fees charged by Escrow Agent for such services may include a mark up over the direct cost of such services to reflect the averaging of direct, administrative and overhead charges of Escrow Agent for such services.

7. Prorations & Adjustments

The term "close of escrow" means the date on which documents are recorded. All pro-rations and/or adjustments shall be made as of the close of escrow based on a 30-day month, unless otherwise instructed in writing.

8. Contingency Periods

Escrow Agent shall not be responsible for monitoring contingency time periods between the parties. The parties shall execute such documents as may be requested by Escrow Agent to confirm the status of any such periods.

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9. Reports

As an accommodation, Escrow Agent may agree to transmit orders for inspection, termite, disclosure and other reports if requested, in writing or orally, by the parties or their agents. Escrow Agent shall deliver copies of any such reports as directed. Escrow Agent is not responsible for reviewing such reports or advising the parties of the content of same.

10. Information from Affiliated Companies

Escrow Agent may provide the parties' information to and from its affiliates in connection with the offering of products and services from these affiliates.

11. Commitment for Title Insurance; Recordation of Documents

The undersigned Buyer hereby acknowledges receipt of a copy of, and an opportunity to review, Commitment for Title Insurance referenced as Order No. NTBL-1183 (the "Commitment") obtained through Escrow Agent in the contemplation of the above transaction, and authorizes the title insurer to issue the policy of title insurance contemplated thereby, which policy shall contain the following numbered exceptions from coverage: 1-11; as shown on the Commitment in addition to any new encumbrances created in connection with this transaction. The undersigned Buyer and Seller affirm that the legal description appearing in the commitment is satisfactory, and authorize Escrow Agent to record documents delivered through escrow which contain said legal description(s) necessary or proper for the issuance of the requested title insurance policy(ies).

12. Personal Property Taxes

No examination, UCC search, insurance as to personal property and/or the payment of personal property taxes is required unless otherwise instructed in writing.

13. Real Property Taxes

The undersigned Buyer and Seller do hereby understand and agree that the proration for general property taxes as provided in the above referenced closing statements, was calculated by utilizing the general property taxes assessed for the year 2006. Accordingly, the Buyer(s) and Seller(s) do hereby hold Escrow Agent free and harmless from any liability or damages caused by an inaccurate proration for general property taxes assessed for the current year. Upon a determination of the assessed property taxes due for the current year, Buyer(s) and Seller(s) agree to make the proper proration adjustment as may required subsequent to closing.

Def NT Obj

1308

14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/ chosen not to) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold **NORTHERN TITLE COMPANY OF IDAHO** and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: BENNINGTON IRRIGATION COMPANY Number of shares: 900
Company: MONTPELIER IRRIGATION COMPANY Number of shares: 100

● Buyer/Seller will transfer the water shares outside of closing and will not hold **NORTHERN TITLE COMPANY OF IDAHO** responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction. If no action is taken on this escrow within 6 months after the closing date specified in the escrow instructions, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

17. Conflicting Instructions & Disputes

If Escrow Agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file an action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

18. Usury

Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

19. Insurance Policies

In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance:

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.

21. Copies of Documents; Authorization to Release

14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/ ~~chosen not to~~) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold **NORTHERN TITLE COMPANY OF IDAHO** and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction. RLL

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: BENNINGTON IRRIGATION COMPANY Number of shares: 900

Company: MONTPELIER IRRIGATION COMPANY Number of shares: 100

• Buyer/Seller will transfer the water shares outside of closing and will not hold **NORTHERN TITLE COMPANY OF IDAHO** responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction. If no action is taken on this escrow within 6 months after the closing date specified in the escrow instructions, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

17. Conflicting Instructions & Disputes

If Escrow Agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file and action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

18. Usury

Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

19. Insurance Policies

In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance:

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.

Escrow Agent is authorized to rely upon copies of documents, which include facsimile, electronic, NCR, or photocopies as if they were an originally executed document. If requested by Escrow Agent, the originals of such documents shall be delivered to Escrow Agent. Escrow Agent may withhold documents and/or funds due to the party until such originals are delivered. Documents to be recorded MUST contain original signatures. Escrow Agent may furnish copies of any and all documents to the lender(s), real estate broker(s), attorney(s) and/or accountant(s) involved in this transaction upon their request.

22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. **WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES. ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.**

A. Taxpayer Identification Number Reporting

Federal law requires Escrow Agent to report Seller's social security number and/or tax identification number, forwarding address, and the gross sales price to the Internal Revenue Service ("IRS"). Escrow can not be closed nor any documents recorded until the information is provided and Seller certifies it's accuracy to Escrow Holder.

B. Federal Withholding & Reporting

Certain federal reporting and withholding requirements exist for real estate transactions where the seller (transferor) is a non-resident alien, a non-domestic corporation or partnership controlled by non-residents or non-resident corporations or partnerships.

C. Taxpayer Identification Disclosure

Parties to a residential real estate transaction involving seller-provided financing are required to furnish, disclose, and include taxpayer identification numbers in their tax returns. Escrow Agent is not required to transmit the taxpayer I.D. numbers to the IRS of the parties. Escrow Agent is authorized to release any party's taxpayer I.D. numbers to any other party upon receipt of a written request. The parties waive all rights of confidentiality regarding their taxpayer I.D. numbers and agree to hold Escrow Agent harmless against any fees, costs, or judgments incurred and/or awarded because of the release of taxpayer I.D. numbers.

23. Privacy Policy

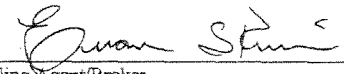
The undersigned Buyer and Seller hereby acknowledge receipt of a copy of the Privacy Policy of Northern Title Company and Escrow Agent.

24. Legal Counsel

The undersigned acknowledge that they have the right to seek legal counsel and tax advice in connection with this transaction. I/we the undersigned real estate salesperson/broker have reviewed the foregoing statement and certify that the above mentioned statement is accurate accounting of the transaction(s) between buyer and seller herein.

I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-1 Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.

Listing Agent/Broker



Selling Agent/Broker



STEVEN B. CUMMINGS

ROGER L. STEPHENS TRUSTEE

BARBARA L. STEPHENS TRUSTEE

"Escrow Agent":
NORTHERN TITLE COMPANY OF IDAHO

BY: 

Def NT Obj

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21. Copies of Documents: Authorization to Release

Escrow Agent is authorized to rely upon copies of documents, which include facsimile, electronic, NCR, or photocopies as if they were an originally executed document. If requested by Escrow Agent, the originals of such documents shall be delivered to Escrow Agent. Escrow Agent may withhold documents and/or funds due to the party until such originals are delivered. *Documents to be recorded MUST contain original signatures.* Escrow Agent may furnish copies of any and all documents to the lender(s), real estate broker(s), attorney(s) and/or accountant(s) involved in this transaction upon their request.

22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. *WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES. ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.*

A. Taxpayer Identification Number Reporting

Federal law requires Escrow Agent to report Seller's social security number and/or tax identification number, forwarding address, and the gross sales price to the Internal Revenue Service ("IRS"). Escrow can not be closed nor any documents recorded until the information is provided and Seller certifies it's accuracy to Escrow Holder.

B. Federal Withholding & Reporting

Certain federal reporting and withholding requirements exist for real estate transactions where the seller (transferor) is a non-resident alien, a non-domestic corporation or partnership controlled by non-residents or non-resident corporations or partnerships.

C. Taxpayer Identification Disclosure

Parties to a residential real estate transaction involving seller-provided financing are required to furnish, disclose, and include taxpayer identification numbers in their tax returns. Escrow Agent is not required to transmit the taxpayer I.D. numbers to the IRS of the parties. Escrow Agent is authorized to release any party's taxpayer I.D. numbers to any other party upon receipt of a written request. The parties waive all rights of confidentiality regarding their taxpayer I.D. numbers and agree to hold Escrow Agent harmless against any fees, costs, or judgments incurred and/or awarded because of the release of taxpayer I.D. numbers.


23. Privacy Policy

The undersigned Buyer and Seller hereby acknowledge receipt of a copy of the Privacy Policy of Northern Title Company and Escrow Agent.

24. Legal Counsel

The undersigned acknowledge that they have the right to seek legal counsel and tax advice in connection with this transaction. I/we the undersigned real estate salesperson/broker have reviewed the foregoing statement and certify that the above mentioned statement is accurate accounting of the transaction(s) between buyer and seller herein.

I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-1 Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.


Listing Agent/Broker

Selling Agent/Broker

STEVEN B. CUMMINGS


ROGER L. STEPHENS TRUSTEE


BARBARA L. STEPHENS TRUSTEE

"Escrow Agent":
NORTHERN TITLE COMPANY OF IDAHO

BY: 

Def NIT Obi

1312

EXHIBIT "H"

NTBL-1183
STEVEN B. CUMMINGS
43 NORTH 100 EAST
AMERICAN FORK, UT 84003

**COPY
WARRANTY DEED**

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER
L. AND BARBARA L. STEPHENS FAMILY TRUST, DATED _____

Grantor(s)

of PROVIDENCE, County of CACHE, State of UT.

hereby *CONVEY AND WARRANT* to

STEVEN B. CUMMINGS,

Grantee(s)

of, County of SALT LAKE, State of UT

for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following
described tract of land in Bear Lake County, State of Idaho:

See Attached Exhibit "A"

To have and to hold the said premises, with their appurtenances unto the said Grantee(s), their heirs and assigns forever. And the said
Grantor(s) hereby covenant to and with the said Grantee(s) that they are the owner(s) in fee simple of said premises; that they are free
from all encumbrances, and that they will warrant and defend the same from all lawful claims whatsoever.
Subject to easements, restrictions and rights of way of record, and taxes for the year 2007 and thereafter.

Witness, the hand(s) of said Grantor(s), this August 3, 2007.

ROGER L. STEPHENS TRUSTEE

BARBARA L. STEPHENS TRUSTEE

COPY

State of IDAHO)
County of BEAR LAKE)

On August 3, 2007, personally appeared before me LORI THORNOCK, a Notary Public in and for the State,
ROGER L. STEPHENS TRUSTEE and BARBARA L. STEPHENS TRUSTEE the signer(s) of the within
instrument, who duly acknowledged to me that they executed the same as Trustees of the STEPHENS
FAMILY TRUST, DATED _____.

Notary Public

Residing: Bloomington, ID
Expires: 10/24/2011

Def NT Abi

1314

"EXHIBIT A"

PARCEL A

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS; THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY 30.

PARCEL D

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.80 CHAINS TO THE PLACE OF BEGINNING.

PARCEL E

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL F

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL I

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:

THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

EXHIBIT "I"

RECORDATION REQUESTED BY:

Instrument # 199030
BEAR LAKE COUNTY
2007-08-03 02:57:43 No. of Pages: 1
Recorded for: NORTHERN TITLE CO.
KERRY HADDOCK
Ex-Officio Recorder Deputy
Date: 8.08
Instrument: WARRANTY DEED

WHEN RECORDED MAIL TO:
Steven B. Cummings
43 North 100 East
American Fork, Ut 84003

WARRANTY DEED

<u>Grantor</u>	<u>Grantee</u>
Roger L. And Barbara L. Stephens Family Trust, Roger L. Stephens and Barbara L. Stephens, Trustees 436 Cobblestone Providence, Utah 84332	Steven B. Cummings 43 North 100 East American Fork, Ut 84003

FOR GOOD AND VALLIABLE CONSIDERATION, the receipt of which is hereby acknowledged, the Grantor hereby sells and forever transfers the following parcels of real property to the Grantee, including the Grantor's right, title and interest therein:

SEE EXHIBIT "A" ATTACHED HERETO AND
INCORPORATED BY REFERENCE

TOGETHER WITH one hundred (100) shares of water stock in Montpelier Irrigation Company and nine hundred (900) shares of water stock in Beannington Irrigation Company.

TOGETHER WITH all pumps, motors, wheel lines, main line and other irrigation equipment.

TOGETHER WITH AND INCLUDING any and all fixtures and improvements, any and all appurtenances, tenements, and hereditaments, and any and all rents, issues, and profits that relate or otherwise pertain to the foregoing parcels of real property.

TO HAVE AND TO HOLD the foregoing parcels of real property unto the Grantee and its successors and assigns forever.

The Grantor hereby covenants that the Grantor is the owner in fee simple of the foregoing parcels of real property; that the foregoing parcels of real property are free and clear of any and all mortgages, liens, or other encumbrances, excepting encumbrances of record in the records of Bear Lake County, Idaho, current taxes, ordinances and federal and state rights and reservations, including, without

WARRANTY DEED - 1

D. C. M. H. Abi

1317

199030

Idaho, current taxes, ordinances and federal and state rights and reservations, including, without limitation, patents, oil, gas and minerals, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose, easements or claims of easement not shown by the public records, use restrictions and building and zoning regulations and ordinances of any governmental unit; and that the Grantors will warrant and defend the same from any and all lawful claims whatsoever.

IN WITNESS WHEREOF, the Grantors hereunto set their hands this 3rd day of August, 2007.

ROGER L. AND BARBARA L. STEPHENS
FAMILY TRUST

By: Roger L. Stephens, trustee

ROGER L. STEPHENS

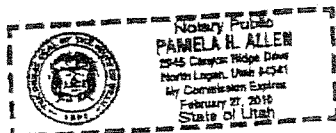
By: Barbara L. Stephens

BARBARA L. STEPHENS

STATE OF Utah)
County of Cache) : ss

On the 3rd day of August, 2007, before me, a Notary Public, personally appeared Roger L. Stephens and Barbara L. Stephens, Trustees of the Roger L. And Barbara L. Stephens Family Trust, known or identified to me to be the persons who executed the Warranty Deed, and duly acknowledged to me that they executed this Warranty Deed.

NOTARY PUBLIC FOR: Pamela H. Allen
Residing at: North Logan
My Commission Expires: 2/27/2010



WARRANTY DEED - 2

Tof NT Obi

199030

EXHIBIT A

PARCEL A
BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 852 FEET; THENCE SOUTH 73° 30' WEST 318 FEET; THENCE NORTH 18° WEST 218 FEET; THENCE SOUTH 73° 30' WEST 2784 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

EXCEPT ALL OF THAT PORTION OF THE FOLLOWING DESCRIBED LAND LYING EASTERLY OF U.S. HIGHWAY 30.

PARCEL D
COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.50 CHAINS; THENCE SOUTH 13° 45' EAST 1.67 CHAINS; THENCE SOUTH 78° WEST 44.63 CHAINS; THENCE NORTH 86° 25' WEST 13.68 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 73° EAST 62.60 CHAINS TO THE PLACE OF BEGINNING.

PARCEL E
BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 78° 15' WEST 35.30 CHAINS; THENCE NORTH 8.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

PARCEL F
COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 38 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

PARCEL I
BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 178 FEET; THENCE SOUTH 35° 30' EAST 1484 FEET; THENCE NORTH 78° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 18° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 78° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 73° 30' WEST 2784 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.
A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
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AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.


*Roll
B.P.D.*

Def NT Obi

EXHIBIT "J"

Monique Bair

From: Lori [lorit@northerntitle.net]
Sent: Wednesday, April 02, 2008 4:17 PM
To: moniqueb@northerntitle.net
Subject: NTBL-1183


20080402151648.w
(75 KB)

Monique,
This policy was on hold as per the buyer.....to be put in a trust Waiting for a copy of the trust. Buyer was on the road and could not send Tried over the months to contact him...no answer even googled his name Recently received a disgruntled letter asking where his deed to the trust was and his policy. Cannot find copy of that letter. So I replied...see attached He countered with a registered letter. Please see both attached.

I still cannot put into the TRUST no copy of the trust
And there was NO money escrowed.
And per the bargained REPC date 07/02/07 it was to be put into STEVEN B. CUMMINGS.
TRANSACTION WAS CLOSED, RECORDED AND DISBURSED only policy still needs to be issued.

Please use the re-recorded corrected legal description.

Call me after you read this and we can visit
Thanks,

Lori Thornock
lorit@northerntitle.net
NORTHERN TITLE COMPANY
680 North 4th Street; Ste. 1
Montpelier, Idaho 83254
208-847-2567
208-847-0881-FAX

-----Original Message-----
From: MFX2530 [mailto:mfxbear@northerntitle.net]
Sent: Wednesday, April 02, 2008 4:17 PM
To: Lori
Subject: Internet FAX Message from 2088470881

This is an internet facsimile message.

Sent from : MFX2530<mfxbear@northerntitle.net>
2088470881
Number of pages : 2
Date : Wed, 02 Apr 2008 15:16:47 -0700

Please see the file attached.

Def NT06j

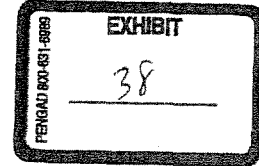
1321

DATE	TIME	PHONE LOG	MESSAGE
3-10-08		Called Fore about policy, the buyer wants policy issued in trust. Fore is trying to contact them to find out correct name of trust. Had policy until Fore sets up trust.	
4-8-08		issue policy in individual name	
			Before issuing policy call Fore.
			MORNS
			Hester

EXHIBIT "K"

Def NT Obj

1323



05/23/2008 12:10 - RECEIVED.....A CALL FROM GARY STEPHENS A SON OF ROGER AND BARBARA STEPHENS HE CALLED WITH CONCERN AND ASKED FOR MY ASSISTANCE IN WHAT HE SHOULD DO TO HELP HIS DISTRAUGHT FATHER

I SUGGESTED HE CALL RANDY BUDGE HIS PARENTS ATTORNEY.
MR. BUDGE IS AN EXCELLENT ATTORNEY AND COULD ADVISE HIM AS TO THE LEGAL STANDPOINT..
ALSO STATED THAT THERE IS ALOT THAT I COULD NOT DISCUSS WITH HIM BECAUSE OF PRIVACY ISSUES
435 452 2360

06/10/2008 14:53 - TALKED TO RANDY BUDGE ATTORNEY FOR STEPHENS AND WENT OVER THE CHRONOLOGICAL ORDER OF EVENTS AND EVENTS OF THIS TRANSACTION

06/05/2008 12:10 - sent all docs that may or may not be relative to Jay Davis at Logan for review and response to attorney for Mr. Cummings sent overnight UPS

PAUL CALLED AND JAY CALLED...WORKING ON GETTING THE SIGNED ADDENDUM FROM EXIT REALTY NKA RECREATION REALTY

06/05/2008 09:40 - RECEIVED A CALL TO DAY FROM MR. ROGER STEPHENS REGARDING A LETTER THAT HE RECEIVED FROM MR. CUMMINGS ATTORNEY. MR. STEPHENS REQUESTED THAT I SEND THE RE-RECORDED CORRECTED DEED TO HIS ATTORNEY MR. RANDY BUDGE.

ALSO HAVE A VOICE MAIL FROM PAUL DAVIS REGARDING A LETTER OF COMPLAINT FROM MR. CUMMINGS THAT HE ALSO WOULD LIKE TO DISCUSS.

04/07/08 conferred with Monique in the Policy Department and it was agreed that we send this Policy out as the PR was prepared from the original REPC that the property to be vested in the STEVEN B. CUMMINGS.....and so will the policy. We have no authority to put property into a trust.

04/02/08 4:31 - received a letter back from Mr. Cummings w/o the trust...
he somehow has decided that nothing has been taken care of on this transaction, however all was completed except for the issuance of the policy. NO money was escrowed. The monies were collected from FAT EXCHANGE for the purchase and docs recorded, disbursed, and closed...with the policy on hold. SENT TO POLICY DEPT FOR ISSUANCE OF POLICY as per the last Cummings letter stating the bargain dated 07/02/07 which would be the REPC in Steven B. Cummings name.

03/14/08 11:45 - drafted a response to Mr. Cummings letter. Stating that we have been unable to contact him and as per our last conversation he would get me a copy of the trust. We will issue policy insurance to his name if he would like it done that way.

03/04/08 13:15 - received a letter from Mr. Cummings today regarding our lack of providing him with a deed to add his wife and then to put the land into his trust. Note: cannot put into his trust w/o a copy of the trust.

11/21/2007 16:50 - TRIED TO CONTACT MR. CUMMINGS TO GO OVER LASTEST UPDATE...not available
11/08/2007 11:17 - MR STEPHENS CALLED TO DAY TO INFORM US THAT THE LEGAL WAS INCORRECT ON THIS LAND THAT HE SOLD AND THAT THE PROPERTY EAST OF THE HWY WAS EXCLUDED.....
THE EXCEPT WAS PUT IN THE WRONG PLACE ON THE DEED.
WE ARE CORRECTING AND RE-RECORDING THE DOCUMENT WITH THE FOLLOWING VERBIAGE.

"THE FOLLOWING PARCELS ARE CONVEYED EXCEPTING THEREFROM ANY PORTION LYING EASTERLY OF U.S. HIGHWAY 30."

08/02/07 2:00 send recorded WD to sellers attorney
Hud Email Sent to Items: G:\ttw\PDF\WTBL-1183\HUD.PDF

08/02/2007 11:43 -

08/02/2007 11:20 - Email Package Sent to Items: G:\ttw\PDF\WTBL-1183\HUD.PDF
G:\ttw\docs\WTBL-1183\BUYERS.DOCS.DOC

08/02/2007 11:10 - Email Package Sent to Items: G:\ttw\PDF\WTBL-1183\HUD.PDF

08/02/2007 09:47 - Hud Email Sent to Items: G:\ttw\PDF\WTBL-1183\HUD.PDF

08/01/2007 13:29 - RECEIVED AN ADDENDUM TO THE REPC ASSIGNING THIS PROPERTY TO STEVEN B. CUMMINGS

08/01/2007 11:35 - FIRST AMERICAN EXCHANGE
CONTACT LAURA
1-866-516-1031
866-669-6096 FAX
STEVEN B. CUMMINGS
STEVEN B. CUMMINGS & LAURA S. CUMMINGS
JEB, BCB AND SBC FAMILY SECOND TRUST,

EMAIL:

07/31/2007 14:52 - Email Package Sent to Items: G:\ttw\docs\WTBL-1183\BL Commitment ID-06.DOC

07/31/2007 14:00 - Email Package Sent to Items: G:\ttw\docs\WTBL-1183\BL Commitment ID-06.DOC

07/26/2007 08:03 - Turbo Title Export Sent to lorit@northerntitle.net
Items: g:\ttw\Export\WTBL-1183.TWF

07/26/2007 08:03 - File Exported to lorit@northerntitle.net

0061

Tbc NT Obi

1324

06/05/2008 09:40 - RECEIVED A CALL TO DAY FROM MR. ROGER STEPHENS REGARDING A LETTER THAT HE RECEIVED FROM MR. CUMMINGS ATTORNEY. MR. STEPHENS REQUESTED THAT I SEND THE RE-RECORDED CORRECTED DEED TO HIS ATTORNEY MR. RANDY BUDGE.

ALSO HAVE A VOICE MAIL FROM PAUL DAVIS REGARDING A LETTER OF COMPLAINT FROM MR. CUMMINGS THAT HE ALSO WOULD LIKE TO DISCUSS.

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08/02/2007 11:43 -

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08/01/2007 11:35 - FIRST AMERICAN EXCHANGE

CONTACT LAURA

1-866-515-1031

866-669-6096 FAX

STEVEN B. CUMMINGS

STEVEN B. CUMMINGS & LAURA S. CUMMINGS

JEB, BCB AND SBC FAMILY SECOND TRUST,

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0221

Daf NT Obj

1325

05/23/2008 12:10 - RECEIVED.....A CALL FROM GARY STEPHENS A SON OF ROGER AND BARBARA STEPHENS HE CALLED WITH CONCERN AND ASKED FOR MY ASSISTANCE IN WHAT HE SHOULD DO TO HELP HIS DISTRAUGHT FATHER

I SUGGESTED HE CALL RANDY BUDGE HIS PARENTS ATTORNEY.

MR. BUDGE IS AN EXCELLENT ATTORNEY AND COULD ADVISE HIM AS TO THE LEGAL STANDPOINT.

ALSO STATED THAT THERE IS ALOT THAT I COULD NOT DISCUSS WITH HIM BECAUSE OF PRIVACY ISSUES

435 452 2360

06/10/2008 14:53 - TALKED TO RANDY BUDGE ATTORNEY FOR STEPHENS AND WENT OVER THE CHRONOLOGICAL ORDER OF EVENTS AND EVENTS OF THIS TRANSACTION

06/05/2008 12:10 - sent all docs that may or may not be relative to Jay Davis at Logan for review and response to attorney for Mr. Cummings sent overnight UPS

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866-669-6096 FAX

STEVEN B. CUMMINGS

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Def NT Obj

1326

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0223

Def NT Obj

1327

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUL 12 AM 11:08

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE**

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO NORTHERN TITLE'S
MOTION TO EXCLUDE LENORE
KATRI AND GREGORY KELLEY**

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

DOROTHY JULIAN, an individual residing
in Eagle, Idaho, EVAN SKINNER, an
individual residing in Montpelier, Idaho,
RYAN OLSEN, an individual residing in

1 | RESPONSE IN OPPOSITION TO NORTHERN TITLE'S
MOTION TO EXCLUDE LENORE KATRI AND GREGORY
KELLEY

Georgetown, Idaho, EXIT REALTY OF
BEAR LAKE, LLC, an Idaho Limited
Liability Company, JOHN DOES I-X,

Third Party Defendants.

The Plaintiff Cummings offers the following response in opposition to Northern Title's Motion to Exclude Lenore Katri and Gregory Kelley. This response is supported by the pleadings previously submitted, as well as the affidavit of Nathan Olsen filed contemporaneously herewith. In addition, Cummings directs the Court to the pleadings filed and arguments made with regard to Cummings' Motion to Exclude Northern Title's Expert Witnesses/Northern Title's Motion for Leave to Extend Disclosure Deadline for Experts.

Moreover, Cummings submits for the Court's review and reference the entire deposition transcript of Ms Katri and Mr. Kelley. Because of the sheer volume, with the exception of Mr. Kelley's report, the exhibits to these depositions will not be provided, but will be available at the Court's request, and can be provided electronically if needed. Although the transcripts themselves are voluminous, because of the ongoing tendency of Northern Title to selectively refer to testimony out of context and disregard deposition testimony that clearly does not support its position, Cummings deems it necessary to provide the Court with the full transcript of these witnesses.

Cummings would also note that neither Ms. Katri nor Mr. Kelley has yet to offer testimony at trial, and without seeing the flow of evidence and foundation laid, it is premature at this point to be excluding testimony at this juncture.

2 | RESPONSE IN OPPOSITION TO NORTHERN TITLE'S
MOTION TO EXCLUDE LENORE KATRI AND GREGORY
KELLEY

I. Northern Title Errantly States that Cummings did not Provide Expert Disclosures

This is a point that has been addressed *ad nauseam* before the Court. Indeed, Cummings timely provided a rather lengthy nine page expert witness disclosure “statement” which is all he is required to do under I.R.C.P. 26(b)(4). (See Exhibit B to Northern Title’s Motion.) Northern Title needs to stop misrepresenting to the Court that Cummings “failed to make expert disclosures.” The authority cited by Northern Title in support of excluding the experts, *Noble v. Ada County Elections*, 135 Idaho 495 (2000), applied specifically to a situation where the party did not make any witness disclosures and further failed to indicate such disclosures in responses to interrogatories. That is simply not the case here. Northern Title’s chief complaint, if there is one, in truth, is not whether Cummings made disclosures, but rather were his disclosures timely supplemented pursuant to I.R.C.P. 26(e). Pursuant to the argument below, Cummings’ supplementation of his expert’s testimony was proper and at the very least not prejudicial to Northern Title.

II. Cummings Supplementation of his Experts’ Report was as Anticipated by Northern Title or at the Very Least was not Prejudicial to Northern Title Warranting Exclusion

Under I.R.C.P. 26(e), parties are allowed to “seasonably” supplement their responses to discovery. What is acceptable to the Court with regard to timing of such supplementation is within the discretion of the Court, and may include supplementation of expert testimony all the way up to the eve of trial depending on the circumstances. See, *Hopkins v. Duo-Fast Corp.*, 123 Idaho 205, 843 P.2d 207 (1993). In reviewing such supplementation, the trial judge should

request an explanation of the late disclosure, weigh the importance of the testimony in question, determine the time needed for preparation to meet the testimony, and consider the possibility of a continuance. *Viehweg v. Thompson*, 103 Idaho 265, 271 (Idaho Ct. App. 1982). The Court should also admit the testimony where there has been no prejudice. *Wiseman v. Schaeffer*, 115 Idaho 537, 539, 768 P.2d 800, 802 (Ct. App. 1989.)

Even if such supplementation of the disclosures was necessary, there is no evidence to suggest that Cummings did not “seasonably” supplement such responses, and further that Northern Title anticipated anything different with what it was provided and when. After Cummings made his expert disclosures, Northern Title followed up on May 5, 2012, by filing a notice of deposition for these witnesses to occur on June 14, 2012. (See Notice of Depositions attached as Exhibit C.) Northern Title made no further requests, including interrogatories requesting documents, reports, etc... with regard to the experts. These two witnesses were notified, and prepared for their testimony accordingly. If their depositions would have been noticed at an earlier date, they would have managed their schedules to prepare for their testimony on the earlier date. Where Northern Title requested the depositions on a certain date, and nothing further before such dates, it is hard to conceive how they were prejudiced or, frankly, expected anything different.

As the Court noted in its July 6, 2012, Memorandum Decision, Mr. Kelley’s appraisal report was provided at the June 14, 2012, deposition (a draft of which was provided by request the day before.) Even though this report was not provided with the initial disclosure, Cummings was justified and/or Northern Title’s actions suggest that it was ^{NOT AS} prejudiced by not receiving the report until that date. First, the disclosure explicitly states that Mr. Kelley was in the process of

preparing a written report to reflect his testimony. Northern Title was therefore on notice that his report was incomplete, and expressed no concern. In fact, Northern Title did not request the report until two days before the deposition. Even then, Northern Title did not insist on a continuation of the deposition date to review the report, but instead proceeded to question Mr. Kelley for several hours with regard to his report. Further, Northern Title cannot argue that receiving this information at the time they did prejudices their “rebuttal” experts because it chose not to disclose any experts itself.

In short, Northern Title has had Cummings’ timely disclosures, followed up with reports and depositions taken on a date of their choosing, which was still seven weeks before trial. It has had ample opportunity to receive and discover the testimony of Cummings’ experts. There has been no prejudice. An exclusion of these witnesses under these circumstances is simply not warranted.

III. Lenore Katri is Qualified as an Expert to Testify with Regard to the Title and Escrow Duties of Northern Title

The fact that Ms Katri has not yet offered any testimony yet in the trial makes Northern Title’s motion to exclude her very problematic because the Court would be basing its decision on anticipated testimony and without hearing the foundation and reasoning for the testimony. This issue at the very least should be reserved for trial.

In any case, Northern Title has no basis to exclude Ms. Katri’s testimony, even if it is regard to the title aspects of Northern Title’s duties. All that Ms. Katri has to show in order to qualify as an expert, is that she has the requisite “knowledge, skill, experience, training or education” to assist the trier of fact on the “matter at hand.” *State v. Hopkins*, 113 Idaho 679,

747 P.2d 88 (Ct. App. 1987) Further, these five qualifications areas are “disjunctive” making “practical experience or special knowledge or training in a *related* field” sufficient. *Id* (emphasis added.) Under this standard, Ms. Katri provided ample testimony in her deposition to indicate that she has “specialized knowledge” and/or sufficient experience in the title and escrow industry to assist the trier of fact pursuant to Rule 702 of the Idaho Rules of Evidence. (See the first 34 pages of her deposition.) Certainly, the lions share of her experience has been as an escrow officer. However, she has had significant experience in working and coordinating with the title department, and that she is familiar with the “rules and policies that govern title officers.” (Katri Dep. 29:15-23.) In particular, she offered the following testimony (conveniently omitted by Northern Title in their motion:)

Q: You mentioned you are not a title officer, but what experience do you have in the title industry?

A: Just long-standing working through a title company. You have to know title before you can really do closings because you have to know what’s on that commitment to make sure that your buyers and sellers understand what’s there and what you need to get releases on, what you need to pay.

Q: So when you’re functioning as an escrow or closing officer, is it fair to say that every transaction involves work with a title?

A: Yes.

Q: Whether you’re a title officer or in the title department?

A: Yes

Katri Dep. 157:11-25

This expertise demonstrated by Katri goes to the heart of Cummings’ claims against Northern Title, and makes her eminently qualified to provide “specialized knowledge” to the trier

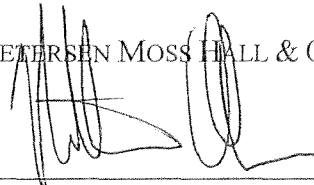
of fact as to how this transaction should have been handled by both the title and escrow department of Northern Title, which work hand in hand on every transaction. Northern Title's motion again omits key facts and law and should be denied.

CONCLUSION

Northern Title has by its own actions shown no prejudice or valid reason to exclude Cummings' timely disclosed experts, for which it has had ample opportunity and has in fact obtained all the information they could from these witnesses. Moreover, Northern Title has no basis to exclude Lenore Katri as a witness, who has had more than 30 years of experience in the title and escrow industry. It's motion should be denied.

DATED this 10 day of July, 2012.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 10 day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83402-1391
FAX: (208) 232-6109
EMAIL: rcb@racinelaw.net

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bearnsonlaw.com

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

Method of Service:

mail () hand () fax email

Attorneys for Roger L. Stephens

mail () hand () fax email

Attorneys for Northern Title Company

mail () hand () fax
courtesy chamber's copy



Nathan M. Olsen

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
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Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

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2012 JUL 12 AM 11:08

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DEPUTY _____ CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

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STEVEN B. CUMMINGS, an individual
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**AFFIDAVIT OF NATHAN M. OLSEN
IN SUPPORT OF PLAINTIFF'S
RESPONSE IN OPPOSITION TO
NORTHERN TITLE'S MOTION TO
EXCLUDE LENORE KATRI AND
GREGORY KELLEY**

1 | AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF
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GREGORY KELLEY

DOROTHY JULIAN, an individual residing in Eagle, Idaho, EVAN SKINNER, an individual residing in Montpelier, Idaho, RYAN OLSEN, an individual residing in Georgetown, Idaho, EXIT REALTY OF BEAR LAKE, LLC, an Idaho Limited Liability Company, JOHN DOES I-X,

Third Party Defendants.

STATE OF IDAHO)
) ss.
County of Bonneville)

I, **Nathan M. Olsen**, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

1. Attached and incorporated as Exhibit 1 is a true and correct copy of "Notice of Taking Deposition of Lenore Katri" dated May 7, 2012.

2. Attached and incorporated as Exhibit 2 is a true and correct copy of "Notice of Taking Deposition of Gregory Kelley" dated May 7, 2012.

3. Attached and incorporated as Exhibit 3 is a true and correct copy of "Deposition of Gregory Kelley."

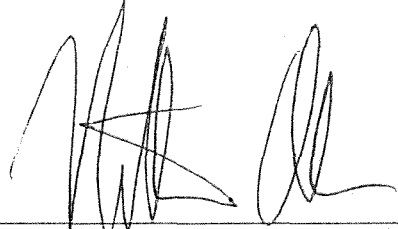
4. Attached and incorporated as Exhibit 4 is a true and correct copy of "Summary Appraisal Report" prepared by Gregory Kelley.

2 | AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF
PLAINTIFF'S RESPONSE IN OPPOSITION TO NORTHERN
TITLE'S MOTION TO EXCLUDE LENORE KATRI AND
GREGORY KELLEY

5. Attached and incorporated as Exhibit 5 is a true and correct copy of "Deposition of Lenore Katri."

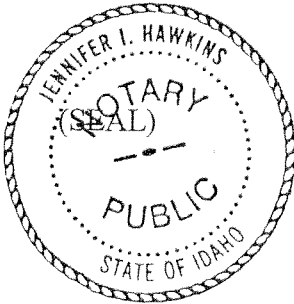
FURTHER affiant saith naught.

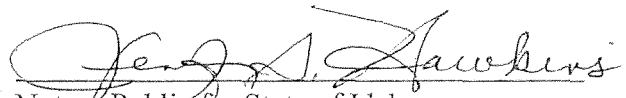
DATED this 10 day of July, 2012.



Nathan M. Olsen

SUBSCRIBED AND SWORN to before me this 10 day of July, 2012.




Notary Public for State of Idaho
Residing at: Biglby, Idaho
My Commission Expires: 06-27-2018

3 | AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF
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GREGORY KELLEY

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Persons Served:

Method of Service:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
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Nathan M. Olsen

4 | AFFIDAVIT OF NATHAN M. OLSEN IN SUPPORT OF
PLAINTIFF'S RESPONSE IN OPPOSITION TO NORTHERN
TITLE'S MOTION TO EXCLUDE LENORE KATRI AND
GREGORY KELLEY

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DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUL 16 AM 8:29

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE**

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

**REPLY BRIEF SUPPORTING
MOTION FOR LEAVE TO AMEND THE
COMPLAINT TO ALLEGE PUNITIVE
DAMAGES**

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

DOROTHY JULIAN, an individual residing
in Eagle, Idaho, EVAN SKINNER, an
individual residing in Montpelier, Idaho,
RYAN OLSEN, an individual residing in
Georgetown, Idaho, EXIT REALTY OF

1 | Reply Brief Supporting Motion For Leave to Amend the
Complaint to Allege Punitive Damages

BEAR LAKE, LLC, an Idaho Limited
Liability Company, JOHN DOES I-X,

Third Party Defendants.

The Plaintiff, Steven Cummings, offers the following reply in support of his Motion for Leave to Amend the Complaint to Allege Punitive Damages. The Court should note that in its "Objection and Response to Plaintiff's Motion," Northern Title essentially side steps most of the authority and facts raised in the Plaintiff's motion. The core of Northern Title's argument appears to be that the Plaintiff's motion is "untimely and unfair." (See Section I to Northern Title's *Obj. and Resp.*) However, this argument has no merit under strong Idaho precedent discussed below.

As indicated in Plaintiff's supporting brief, adding a punitive damages claim requires a motion under I.C. 6-1604 and a pre-trial hearing. In Idaho, where the Plaintiff has filed such a motion that only requests for punitive damages and where the Defendant has been on notice of a potential punitive damages claim, there is no prejudice to the Defendant even if the motion and hearing is held after discovery is held and only a few weeks before trial. See, *Vandelin v. Costco Wholesale Corporation*, 140 Idaho 416; 95 P.3d 34 (2004). In *Vandelin*, the plaintiff did not move to amend the complaint for punitive damages until after discovery was completed and less than a month before trial. The court granted the plaintiff's motion only eight days before trial. Plaintiff did not file the actual amended complaint until eight days into trial. The defendant appealed the decision, claiming that this late amendment was prejudicial and at the very least warranted a continuance of the trial date. The Supreme Court upheld the district court, indicating

2 | Reply Brief Supporting Motion For Leave to Amend the
Complaint to Allege Punitive Damages

that the Defendant was not prejudiced by the amended complaint because it was on notice of the punitive damages claim. Interestingly, a recent decision by the Supreme Court succinctly interprets its holding in *Vandelin*:

[I]n *Vandelin v. Costco Wholesale Corp.*, this Court found that a plaintiff had sufficiently pled punitive damages when the "allegations contained in the amended complaint suggest[ed] that the prayer for punitive damages was based on injuries she sustained from falling merchandise while shopping at the Boise Costco." We also found that Costco had acknowledged the claim for punitive damages by raising three separate defenses to a claim for punitive damages in its Answer. *Id.* That was sufficient to show that Costco was on notice of the plaintiff's claim for punitive damages.

Villa Highlands, LLC v. Western Cmty. Ins. Co., 148 Idaho 598, 602 (Idaho 2010)(citations omitted).

In this case, Cummings notified Northern Title of his intention to amend his complaint to add punitive damages in the amended complaint. (See Plaintiff's 2nd Amended Complaint filed in October 2011.) Northern Title certainly anticipated this motion by the fact that it has previously moved this Court in its "Second Motion in Limine" to "bar" Cummings from "arguing the existence of punitive damages," and devoting several pages in its supporting memorandum to that effect. (See Def. North. Title's *Memorandum in Support of Second Motion in Limine*, June 21, 2012.) Northern Title thus had the requisite notice of this claim, and has even tried to argue against it before it was filed. Pursuant to *Vandelin* (as interpreted by *Villa Highlands*). Strong Idaho precedent support's Cummings' amendment at this stage of the litigation.

With regard to the other arguments (or lack thereof) by Northern Title, there is simply no dispute that Northern Title failed to obtain the written or verbal consent of Cummings before making changes at the request of seller's agent (and later the seller himself) contrary to the written purchase agreement and the title commitment (regardless of whatever version they are

attempting to claim of these particular documents.) There is also no dispute that the company has been completely one sided and non-neutral from the very outset to now, including collaborating against its fiduciary and "indemnifying" one of the parties. Northern Title's incompetence combined with its total abandonment of its fiduciary, contractual and statutory duty to be "neutral," as well as the other factors mentioned, make it at least reasonably likely that the jury will find that its actions are subject to punitive damages. It's important to note that Northern Title initially was not defending claims against it, but rather made a decision to defend and indemnify one of the parties. As aptly pointed out in Ms. Katri's deposition testimony, this is well outside the bounds of expected conduct of a title and escrow agency, or an "extreme deviation from the standard of conduct" which warrants punitive damages. (The Court should note that the Defendant has offered no expert testimony of its own suggesting that this behavior is not an extreme deviation.)

Oddly, Northern Title is also trying to foist the likely inapplicable bad faith standard for traditional insurance carriers, (the proverbial attempt to pound a round block into a square hole). (See *NT's Obj, and Resp.* At 5) Interestingly, trying to apply such a standard to a title and escrow agency, if anything increases Cummings' argument of bad faith. Upon being made aware of a claim, Northern Title (1) "intentionally and unreasonably" failed to take any appropriate action to resolve the claim, (2) the claim is "not fairly debatable," (i.e. the written contract was clear and unambiguous and Northern Title admits that it did not obtain consent to make changes, (3) the failure to take care of the claim was not a "good faith mistake" (i.e. failure to obtain consent, failing to remain neutral, failing to follow its own internal instructions etc...) and (4) given the massive costs that Cummings has incurred because of Northern Title's actions above and beyond

the loss of the east side property, he is not fully compensated by contract damages. Thus, even by Northern Title's likely misplaced authority, Cummings at least has even a stronger claim for bad faith.

In essence, Northern Title's "lateness" argument has no merit or basis in Idaho law in that it has long been under notice and expectation of a punitive damages claim, and it has failed to truly address the facts and law that support Cummings motion, which should therefore be granted.

DATED this 13th day of July, 2012.

PETERSEN MESS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 13 day of July, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Method of Service:

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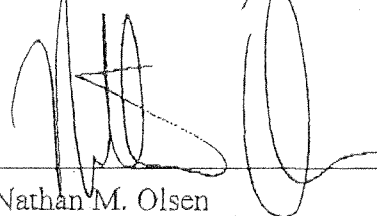
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Nathan M. Olsen

2012 JUL 16 AM 10:49

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. _____

Brad H. Bearnson (I.S.B. 7086)
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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

Defendants.)

Case No. CV-2009-183

**MEMORANDUM IN REPLY TO
PLAINTIFF'S OPPOSITION TO
EXCLUDING LENORE KATRI AND
GREGORY KELLEY & REQUEST TO
FILE OVER-LENGTH REPLY BRIEF**

ROGER L. STEPHENS, an individual,)

Third Party Plaintiff,)

vs.)

DOROTHY JULIAN, an individual)
residing in Eagle, Idaho,)

Third Party Defendant.)

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,

(hereinafter "Defendant"), through counsel of Bearnson & Caldwell, LLC, and hereby provides

this *Memorandum in Reply to Plaintiff's Opposition to Excluding Lenore Katri and Gregory Kelley*.

I. CUMMINGS DID NOT "SEASONABLY SUPPLEMENT" HIS EXPERT DISCLOSURES AND HIS ATTEMPTS TO BLAME NORTHERN TITLE FOR HIS OWN INTENTIONAL DILATORY CONDUCT IS WITHOUT MERIT.

Under the Court's *Order Setting Jury Trial*, Cummings was required to make his expert disclosures within 140 days before trial, or by March 13, 2012. See *Order Setting Jury Trial* at ¶ 5. Further, Plaintiff's disclosures were required to be made with the same specificity required by Rule 26(b)(4)(A)(i) of the Idaho Rules of Civil Procedure. *Id.*; see also I.R.C.P. 26(b)(4)(A)(i). As is apparent, "this expert witness disclosure requirement under IRCP 16 is separate and distinct from any discovery demands served by the parties under IRCP 26 through IRCP 37." See *Memorandum Decision on Plaintiff's Motion to Exclude Northern Title's Expert and on Northern Title's Motion to Extend Disclosure Deadline*, 2 (July 6, 2012).

Cummings did not disclose his experts in accordance with Rule 26(b)(4)(A)(i) until Northern Title compelled such by deposition on June 14, 2012. This has been explained at length in Northern Title's *Memorandum in Support to Exclude Lenore Katri & Gregory Kelley*, 3-7 (July 2, 2012). In response, Plaintiff does not disagree, but rather shallowly asserts that he "seasonably supplemented" his disclosures on June 14, 2012.

The truth is, Cummings did not disclose the heart of his 264(b)(4)(A)(i) disclosures until June 14, 2012. Cummings did not disclose either of his experts' actual opinions, the basis of those opinions, or the documents on which those experts would rely, until June 14, 2012. Where these disclosures did not occur until June 14, 2012, it is absurd to think that Cummings' disclosure

was “supplemental” in nature. Indeed, Cummings’ counsel, Nathan Olsen, admits that “Mr. Kelley was anticipating to have that report prepared and submitted at the time of the deposition,” and that Kelley was not “pressed . . . to finish his report” until the day before the deposition. See *Nathan Olsen Aff’d.* at ¶ 6, attached hereto as Exhibit “A.” (exhibits excluded). Similarly, Cummings did not supply his other expert, Lenore Katri, with those documents on which she based her opinions until far after March 13, 2012. See *Katri Depo.* 61:19-62:1, attached hereto as Exhibit “B.” In reality, Plaintiff’s disclosures on June 14, 2012 were not supplement, but were a mad dash to cover up an intentionally dilatory and prejudicial withholding of expert opinions.

Cummings’ disclosures were also anything but “seasonable.” First, the required deadline of March 13, 2012 was the deadline for all of Cummings’ expert disclosures, not least importantly those disclosures that would explain the opinions and basis of opinions held by Cummings’ experts. See *Order Setting Jury Trial* at ¶ 5; see also I.R.C.P. 26(b)(4)(A)(i).

In an attempt to dodge his intentional withholding of expert opinions, Cummings makes the unconscionable argument of “you didn’t ask, so we didn’t provide.” The Court’s scheduling order was issued pursuant to Rule 16 of the Idaho Rules of Civil Procedure, and as that Order and the Court explain “this expert witness disclosure requirement under IRCP 16 is separate and distinct from any discovery demands served by the parties under IRCP 26 through IRCP 37.” See *Memorandum Decision on Plaintiff’s Motion to Exclude Northern Title’s Expert and on Northern Title’s Motion to Extend Disclosure Deadline*, 2 (July 6, 2012). In reality, if Plaintiff’s argument is to be believed, then the logical conclusion is that but Northern Title compelling Cummings’

expert disclosures by deposition, Cummings never would have made his 26(b)(4)(A)(i) disclosures.

Finally, Cummings has prejudicially impaired Northern Title by withholding expert opinions. First, it would be entirely and unfairly prejudicial if Cummings experts were admitted, when Northern Title's experts have been excluded for the exact same reasons – withholding expert opinions until June 14, 2012. Second, as explained in Northern Title's recently filed *Motion to Reconsider*, Cummings' withholding of Kelley's appraisal report prejudiced Northern Title's expert appraisal report, where both reports rely on different dates-of-sale in valuing the property. See *Mem. Supp. Mot. Reconsider* at 5-7 (July 11, 2012).

Cummings expert disclosures were intentionally late, withheld until June 14, 2012. The withholding of an expert's actual opinions and the basis of those opinions cannot and should not be whisked away by a meritless Rule 26(e) "supplementation" argument. Plaintiff's June 14, 2012 disclosures were far from being supplemental in nature, and Plaintiff's counsel has admitted to intentionally withholding expert reports until June 14, 2012. Plaintiff's actions have intentionally and unfairly prejudiced Northern Title's case. Plaintiff's withholding of expert opinions has led Northern Title's expert creating an appraisal that now would need to be significantly altered. Further, the admission of Plaintiff's experts would be entirely prejudicial where Defendant's experts have already been excluded for the exact same reasons which justify the exclusion of Plaintiff's experts.

II. LENORE KATRI IS NOT QUALIFIED UNDER RULE 702 OF THE IDAHO RULES OF EVIDENCE, AND DUMPING THREE HUNDRED AND NINETY (390) PAGES OF DEPOSITION TEXT ON THE COURT IS NOTHING LESS THAN AN ATTEMPT TO HIDE THE BALL.

First and foremost, Plaintiff has properly pointed the Court to the most salient portions of Katri's deposition transcript, which show she lacks the requisite expertise to opine on specific title officer duties. As the Idaho Supreme Court pointed out as early as 1966, it is "not necessary that the entire deposition be introduced in evidence, but only the portions as were pertinent to the examination of the witness." *Hodge v. Borden*, 91 Idaho 125, 130-131, 417 P.2d 75, 80-81 (Idaho 1966). Similarly, "depositions are no longer physically filed with the clerk and the trial court is not required to review the entire deposition" *Brown v. Matthews Mortuary, Inc.*, 118 Idaho 830, 833, 801 P.2d 37 40 (Idaho 1990).

Here, Plaintiff seeks to have Lenore Katri, a title officer, opine on narrowly tailored specific issues in regards to the duties of a title officer. These include a duty to (1) complete the transaction according to the real estate purchase contract, (2) inform an insured of property that is encumbered or does not belong to the seller, (3) not issue a title policy months after closing even when relying on the explicit instructions of the insured, (4) not issue a title policy that contains a legal description different from the real estate purchase contract, (5) its insured after becoming aware of a potential claim, (6) preserve records after becoming aware of a claim and (7) to respond and remedy an insured in response to a claim. See *Pl's. Supp. Discl. Witnesses* at 2, ¶ 1, 4; see also *Id.* at 3, ¶¶ 8-9, 11-13, attached hereto as Exhibit "C."

Under Rule 702 of the Idaho Rules of Evidence, a witness must first be “qualified” before tendering an expert opinion to the jury. I.R.E. 702. The record shows that neither Katri’s experience or expertise has been in a title department. Katri testified that she has never read any booklets or publications on the duties of a title officer. See Ex. “B,” *Katri Depo.* 30:25-31:3. At most, Katri testified she receives periodical emails from the title guaranty company notifying its insured’s of changes in the law. *Id.* Katri testified she has no specific training on Idaho title officer duties, procedures, or standards. *Id.* at 143:3-12. When asked if she could even evaluate whether a title officer had taken the proper steps to put together a title commitment, Katri testified that how to carry out this duty was outside of her realm of knowledge because she was not a title officer. *Id.* at 165:7-16. Further, Katri testified that when technical questions arose regarding title insurance, that she deferred such questions to a different department, the title department. *Id.* at 31:8-23.

Katri’s above sworn testimony evidences that she does not possess the requisite expertise. While she may have worked alongside title departments for some years, she has never worked inside of a title department. To retort Katri’s obvious lack of expertise, Cummings has dumped three hundred and ninety (390) pages of deposition on the Court, and instructed the Court to go find the expertise that not even Plaintiff could locate. Defendant Northern Title has taken those steps for the Court, and based on the deposition testimony provided on June 14, 2012, Katri is not qualified to testify as a title officer expert.

CONCLUSION

The record establishes by the documents submitted, the depositions taken, and by the

admissions of Cummings' counsel, that Cummings intentionally postponed his 26(b)(4)(A)(i) disclosures until compelled by Northern Title to disclose such on June 14, 2012. Cummings intentionally intended for Kelley not to disclose his report until June 14, 2012, and Katri's expert opinions were also intentionally withheld until June 14, 2012. By Cummings' own admissions, the only reason he disclosed his expert opinions is because he was compelled to do so by Northern Title's depositions. To date, Northern Title's own expert has been excluded, where its expert appraisal report was not disclosed until June 14, 2012. Fairness, justice and logic dictate that if the Court is to exclude Defendant Northern Title's expert, Plaintiff's experts must too be excluded.

Notwithstanding the above, Lenore Katri does not possess the requisite expertise to testify as a title officer expert. She has no specific training, aside from periodical emails sent to her escrow officer department. She has never worked inside of a title department, and presumably has never even been licensed as a title officer. Katri has worked for many years in the "industry," but solely as an escrow officer. The controlling axiom is that she "may be qualified to render opinions about some things within a particular professional field but not others." *State v. Glass*, 146 Idaho 77, 82-83, 190 P.3d 896, 901-902 (Idaho App. 2008).

DATED this 13th day of July, 2012.

BEARNSON & CALDWELL, LLC

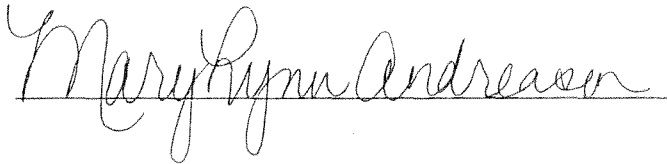


Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of July, 2012, I served a true and correct copy of the above and foregoing **MEMORANDUM IN REPLY TO PLAINTIFF'S OPPOSITION TO EXCLUDING LENORE KATRI AND GREGORY KELLEY & REQUEST TO FILE OVER-LENGTH REPLY BRIEF** to the following person(s) as follows:

Nathan M. Olsen	<input checked="" type="checkbox"/>	U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	<input type="checkbox"/>	Hand Delivery
485 "E" Street	<input type="checkbox"/>	Overnight Mail
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	<input checked="" type="checkbox"/>	Email (Nathan@pmholaw.com)
Randall C. Budge	<input checked="" type="checkbox"/>	U.S. Mail/Postage Prepaid
Jason E. Flaig	<input type="checkbox"/>	Hand Delivery
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED	<input type="checkbox"/>	Overnight Mail
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Memorandum Reply

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EXHIBIT "A"

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Attorneys for Plaintiff, Steven B. Cummings

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation,

Third Party Plaintiffs,

vs.

DOROTHY JULIAN, an individual residing

Case No.: CV-09-183

AFFIDAVIT OF NATHAN M. OLSEN
IN SUPPORT OF MOTION TO
EXCLUDE DEFENDANT, NORTHERN
TITLE COMPANY'S EXPERT
WITNESSES AND TESTIMONY AND
FOR SANCTIONS INCLUDING
ATTORNEY FEES UNDER IRCP 37(b)

1|Affidavit of Nathan M. Olsen in Support of Motion to
Exclude Defendant, Northern Title Company's Expert
Witnesses and Testimony and for Sanctions Including
Attorney Fees Under IRCP 37(b)

Memorandum Reply

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in Eagle, Idaho, EVAN SKINNER, an individual residing in Montpelier, Idaho, RYAN OLSEN, an individual residing in Georgetown, Idaho, EXIT REALTY OF BEAR LAKE, LLC, an Idaho Limited Liability Company, JOHN DOES I-X,

Third Party Defendants.

STATE OF IDAHO)
) ss.
County of Bonneville)

I, **Nathan M. Olsen**, do solemnly swear (or affirm) that the testimony given in this sworn statement is the truth, the whole truth, and nothing but the truth, that it is made on my personal knowledge, and that I would so testify in open court if called upon to do so.

1. On or about March 12, 2012, Defendant Northern Title Company of Idaho, Inc. (Northern Title) filed an "Amended Witness Disclosure and Third Party Plaintiff Witness Disclosure" naming only one expert witness, a "Craig Warren" as an expert Certified General Appraiser expected to "testify concerning the appraisal value of the property." (A true and correct copy is attached as "Exhibit A.") No other information was provided with regard to Mr. Warren pursuant to I.R.C.P. 26(b)(4)(A)(I), including any written report.

2. On or about May 2, 2012, I propounded written discovery to Northern Title, electing under I.R.C.P. 26(b)(4) to obtain information about Northern Title's expert by "interrogatory." I specifically requested the following:

- (1) a complete statement of all opinions to be expressed and the basis and reasons therefor;
- (2) the data or other information considered by the witness in forming

2 | Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

Memorandum Reply

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the opinions; (3) any exhibits to be used as a summary of or support for the opinions; (4) any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; (5) the compensation to be paid for the testimony; and (6) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

3. On June 4, 2012, Northern Title responded to this interrogatory as such:

Defendant Northern Title has not yet obtained a statement of opinions from expert witnesses in this matter.

The response then indicates that Northern Title retained two expert witnesses "Craig Warren" and "Werner Rosenbaum." The response provides absolutely no other information about these potential witnesses, including even the topic of their testimony. A true and correct copy of Northern Title's responses are attached as "Exhibit B" (see page 8 and 9).

4. Northern Title's principal owner and agent, Jay Davis, signed a sworn verification of the responses testifying that he "read the foregoing" responses, and "knows and understands the contents thereof" and that "the same are true of his knowledge." (See Page 19 Exhibit B)

5. According to the Court's "Order Setting Jury Trial" Northern Title's expert witness disclosures were due no later than April 15, 2012. Moreover, all discovery should have been completely responded to and supplemented by June 2, 2012.

6. On behalf of the Plaintiff, I timely disclosed two experts, escrow officer, Lenore Katri, and appraiser, Greg Kelley. Pursuant to a May 8, 2012 "Amended Notice of Taking Deposition of Gregory Kelley," Northern Title elected to discover facts known and opinions of Mr. Kelley by deposition, which was taken on June 14, 2012. (A true and correct copy of which is attached

3 | Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

Memorandum Reply

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as Exhibit C.) I have never received any interrogatory from Northern Title requesting any additional information, opinions, etc... from Mr. Kelley. Further, Northern Title's notice of deposition requests no such information or documents, but simply that Mr. Kelley provide his oral examination. About two days before the deposition, I received an e-mail request from Northern Title attorney, Aaron Bergman, requesting Mr. Kelley's appraisal report. Because we had not received such a request before, Mr. Kelley was anticipating to have that report prepared and submitted at the time of the deposition. Nevertheless, after receiving this request, I pressed Mr. Kelley to finish his report which we then provided a draft of one day prior to the deposition. Mr. Kelley was questioned for more than six hours about his qualifications, report and opinion by Defendants' attorneys.

7. During Mr. Kelley's deposition, I noticed Roger Stephens' attorney, Jason Flaig, and Northern Title attorney, Aaron Bergman, referring to a document that I had never seen nor had been provided. At least a couple of times I observed Mr. Flaig and Mr. Bergman glancing at the document, nudging each other and even snickering at one point. About four hours into the deposition, Mr. Bergman marked as an exhibit a document entitled "Uniform Agricultural Appraisal Report" prepared by "Craig Warren" for "Northern Title" on February 7, 2012. I had not been provided this document on that very moment (about 6:00 PM on June 14, 2012.) Mr. Kelley had also never seen this report. Over my strenuous objection, the Defendants' attorneys proceeded to question Mr. Kelley for another two hours in relation to the document. A true and correct copy of the cover page of this report is attached as Exhibit D.

8. As of the date of this affidavit, I have yet to be provided any additional information

4 | Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

Memorandum Reply

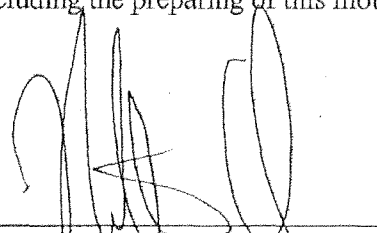
1358

whatsoever with regard to Northern Title's named experts. I have not received any background or qualifications of these individuals, no opinions (other than the alleged "appraisal report" prepared several months ago but not provided until June 14), facts or documents relied upon in such opinions, etc...

9. In some fashion or another, Northern Title and its attorneys have been involved in this case since March of 2010. Stephens initially filed a 3rd party claim against Northern Title that was withdrawn. However, Northern Title's attorneys appeared as "co-counsel" for Stephens (in actuality was merely a disguise to represent Northern Title's own interest). The Plaintiff amended his complaint in June of 2011 to add Northern Title as a Defendant.

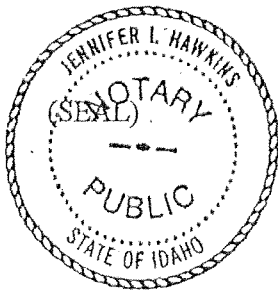
10. To date, I have incurred no less than 14 hours of attorney time to address the Defendants' violations with regard to expert disclosures, and in particular, the surprise appraisal report provided at Mr. Kelley's June 14, 2012, deposition. These costs include the time spent defending Mr. Kelley's deposition and the aftermath including the preparing of this motion.


DATED this 19 day of June, 2012.



Nathan M. Olsen

SUBSCRIBED AND SWORN to before me this 19 day of June, 2012.




Notary Public for State of Idaho
Residing at: Regley, Idaho
My Commission Expires: 10-27-2012

5|Affidavit of Nathan M. Olsen in Support of Motion to Exclude Defendant, Northern Title Company's Expert Witnesses and Testimony and for Sanctions Including Attorney Fees Under IRCP 37(b)

Memorandum Reply

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CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 14 day of June, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

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Attorneys for Northern Title Company

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*Attorneys for Dorothy Julian, Evan,
Skinners, Ryan Olsen, and Exit Realty,
of Bear Lake, LLC*

mail hand fax
courtesy chamber's copy



Nathan M. Olsen

6 | Affidavit of Nathan M. Olsen in Support of Motion to
Exclude Defendant, Northern Title Company's Expert
Witnesses and Testimony and for Sanctions Including
Attorney Fees Under IRCP 37(b)

Memorandum Reply

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EXHIBIT "B"

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
Plaintiff,)

vs.)

Case No. CV-2009-183

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF IDAHO,)
INC., and Idaho Corporation, JOHN)
DOES I-X,)
Defendants.)

DEPOSITION OF

LENORE KATRI

JUNE 14, 2012

(Caption continued to next page)

REPORTED BY:

TIFFANY FISHER, CSR No. 979, RPR

Notary Public

Memorandum Reply

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Lenore Katri 6/14/2012

1 Q. Do you work directly in the title department
2 now?

3 A. No.

4 Q. Are there any special books or publications
5 that you've read that deal with being an escrow officer?

6 A. Over the years, there have been a few, but not
7 very many.

8 Q. Can you recall what those were?

9 A. Hmm-um.

10 Q. Can you recall what the topics of those were?

11 A. Just general escrow, what happens in an
12 escrow, what you do, your function.

13 Q. So is it a relatively-general layout of what
14 an escrow does?

15 A. Yes.

16 Q. Did you read any publications or any kind of
17 instruction booklets on title insurance agents? Not
18 agents.

19 What would you use as the correct term for a
20 title insurance officer?

21 A. A title officer.

22 Q. Thank you. I'm glad you clarified it for me
23 because I feel like I could have been confusing you.

24 A. No.

25 Q. Have you read any kind of training or booklets

Lenore Katri 6/14/2012

1 or publications on being a title officer?

2 A. Our underwriter normally sends out e-mails
3 when they have anything come up.

4 It's changing. You know, they talk about
5 easements sometimes and, you know, just general title
6 stuff. And you read through those and make sure you
7 know that there has been some changes.

8 Q. So when it comes to real expertise of title
9 stuff, do you look a lot to the underwriter for guidance
10 on that?

11 MR. OLSEN: Object to foundation.

12 MR. BERGMAN: Well, let me -- if it's an
13 objection as to form, that's fine.

14 Q. (BY MR. BERGMAN) But you can go ahead and
15 answer, if you can.

16 A. Normally, I would go to my title department.
17 And then if they have any questions, they will go to the
18 underwriter.

19 Q. I know we're hashing a lot into you as an
20 independent individual and you as a business person, but
21 have you, yourself, written any articles or publications
22 on being an escrow officer?

23 A. No.

24 Q. Written any publications or articles just
25 about escrow in general?

Lenore Katri 6/14/2012

1 that she has relied on. And we'll mark it as exhibit --
2 the last exhibit.

3 MR. OLSEN: Maybe we'll do it -- I think we've
4 discussed before that this whole binder was submitted.

5 MR. BERGMAN: Right. I know it has been
6 submitted. But I aim to be able to look back and see
7 what we're talking about in this deposition.

8 MR. OLSEN: All right.

9 MR. FLAIG: Don't you want that other
10 loose-leaf stuff too?

11 MR. BERGMAN: Yeah, the whole thing. I'll
12 have this No. 3 and then this loose-leaf stuff be No. 4.

13 MR. OLSEN: Okay.

14 Q. (BY MR. BERGMAN) So the stuff that we're
15 going to be marking as No. 4, you received before?

16 A. This?

17 Q. Yes.

18 A. Yes.

19 Q. So, just for the record, the documents that
20 you received earlier, when did you receive these, do you
21 know?

22 A. Maybe 30 days ago.

23 Q. Okay. So about a month ago.

24 And then this binder that will be marked as
25 Exhibit No. 3 you received last Tuesday?

Lenore Katri 6/14/2012

1 A. Yes.

2 (Deposition Exhibit Nos. 3 and 4 were marked.)

3 Q. Do you recall ever looking at that Exhibit
4 No. 35?

5 A. I'm pretty sure it's in this binder. If I
6 looked at it, I just skimmed through it because I didn't
7 have time.

8 Q. So it wouldn't be something you used to
9 formulate your opinion today?

10 A. No.

11 MR. OLSEN: Counsel, I'm going to say that I'm
12 going to need to make a copy of this because I think
13 this is my original copy of this subpoena. I probably
14 have a copy of this, but I want to make sure I have one
15 before I -- so I guess we can --

16 MR. BERGMAN: We can make a copy at the end.

17 MR. OLSEN: A copy at the break. Okay.

18 MR. BERGMAN: I just ask on the record that it
19 be preserved as it is now.

20 MR. OLSEN: Um-hmm.

21 Q. (BY MR. BERGMAN) I'm going to hand you what
22 has been previously marked as Exhibit No. 42.

23 Have you ever seen this document before?

24 A. Yes.

25 Q. And when do you recall reviewing that

Lenore Katri 6/14/2012

1 you've been employed in the past; correct?

2 A. Correct.

3 Q. What sorts of training in Idaho law regarding
4 title officer duties, procedures, and standards have you
5 received?

6 A. Title officer?

7 Q. Yeah. If you were a title officer, you get
8 certain training on the laws of Idaho and procedures and
9 duties and that sort of thing.

10 What specific training have you had in that?

11 A. Well, I'm not a title officer, so I wouldn't
12 do any training on title officer.

13 Q. Okay. And just one other thing too.

14 You mentioned that case that you were involved
15 in the past. I don't know how to say it.

16 A. Rencher.

17 Q. When was that? What year?

18 A. I don't remember.

19 Q. Ten years ago, did you say?

20 A. Yeah, somewhere around there.

21 Q. Was that in Idaho?

22 A. Yes.

23 Q. And what was it about?

24 A. Some personal property that the buyer claimed
25 that he was to receive in the transaction, and the

Lenore Katri 6/14/2012

1 A. Yes, they should.

2 MR. OLSEN: That's all I have.

3 MR. BERGMAN: I just have a few followup
4 questions.

5 FURTHER EXAMINATION

6 BY MR. BERGMAN:

7 Q. Ms. Katri, you testified that you are familiar
8 with the laws and regulations governing escrow officers;
9 correct?

10 A. Yes.

11 Q. Are you also just as familiar with the laws
12 and regulations governing title officers?

13 A. Probably not as much.

14 Q. And why not?

15 A. Because I'm an escrow officer, not a title
16 officer.

17 Q. Can you point to any specific laws that you've
18 relied on in forming your opinions today?

19 A. Like in a law book?

20 Q. Um-hmm.

21 A. No.

22 Q. Have you made an effort to do so up until this
23 point?

24 A. No.

25 Q. Looking at Lori Thornock's affidavit and

Memorandum Reply

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EXHIBIT "C"

Nathan M. Olsen, Esq.
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, Idaho 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
ISB # 7373

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah, JOHN DOES)
I-X,)
)
Defendants.)

Case No. CV-2009-183

**PLAINTIFF'S SUPPLEMENTAL
DISCLOSURE OF WITNESSES**

In addition to the fact and expert witnesses previously disclosed by the Plaintiff, Steven Cummings, Plaintiff by and through the undersigned counsel, hereby discloses the following expert witnesses that may be called at trial:

**Lenore Katri
President
Mountain West Title & Escrow
390 W. Sunnyside Road, Idaho Falls, ID 83402**

Memorandum Reply

Ms. Katri has been in the title & escrow industry for 32 years and has been the President of Mountain West Title & Escrow, an Idaho-licensed escrow agency, in Idaho Falls, Idaho since 2006.

Ms. Katri will testify with regard to the Idaho standards for title and escrow companies, as established by law, regulation and by long standing industry practices. She will provide her analysis of the conduct of the Defendant Northern Title Company, before during and after the subject real estate purchase closed. She will also discuss the standard procedures and document preparation that a title and escrow company is required to follow, and will analyze the actions taken by Northern Title, including the numerous anomalies. Her testimony will be based on the documents and testimony on the record obtained in this case. Issues that will be discussed in Ms. Katri's analysis and testimony include the following:

- 1) Northern Title's duty to complete the transaction according to the explicit direction of the written purchase and sale agreement.
- 2) Northern Title's duty to follow the instructions and obligations of the written closing and escrow agreement.
- 3) Northern Title's duty to seek the written approval from both parties before changing any of the terms of the contract or deed.
- 4) Northern Title's duty to inform the buyer or insured of any property contained within the contract's legal description that does not belong to the seller, or is otherwise encumbered.
- 5) Northern Title's duty to record a warranty deed that is consistent with the written purchase agreement.

- 6) Northern Title's duty to not modify a warranty deed after it has been recorded, without explicit authorization from both buyer and seller.
- 7) That the modifications by Northern Title made to the deed cannot be considered in any way, shape or form as merely correcting a "scriveners error."
- 8) Whether it is appropriate to issue a title policy more than eight months after the transaction has closed, including whether a title company justified in delaying that policy because it claims that it was waiting from instruction from buyer to deed the property to a trust.
- 9) Whether it is appropriate for Northern Title to issue a title policy for a legal description that is different from the title commitment and the purchase and sale agreement, and after explicit internal direction to issue the policy according to the contract and title commitment.
- 10) Northern Title's duty to remain a neutral party as escrow and closing officer, and to disclose any actual or perceived conflicts of interest.
- 11) Northern Title's fiduciary duty toward its insured, in particular after it has become aware of a potential claim.
- 12) Northern Title's duty not to delete or destroy records once it has become aware that there has been a claim.
- 13) Northern Title's duty to properly respond to and remedy its insured when it has become aware that there is a defect in the property insured.

- 14) Any and all relevant issues with regard to her expertise as it relates to the conduct of Northern Title, including any additional issues that may be learned through discovery.

Ms. Katri has not previously testified as an expert witness. She will be compensated \$50 per hour for her time.

Gregory Kelley
Kelley Real Estate Appraisers
520 W 15th St # 100
Idaho Falls, ID 83402

Mr. Kelley replaces Mr. Linford who was previously disclosed. Mr. Linford is not available for the rescheduled trial. Mr. Kelley will testify as to the present and future value of the subject property, and its diminished value resulting from the exclusion of the east side. His analysis will include a valuation of the property as a whole, including the acreage on the east side, compared to its diminished value as a whole without the west side acreage. He will also testify as to the value of the excluded west side property by itself. His analysis may also include valuation of portions of the property that was part of the purchase and sale agreement that was conveyed to Mr. Cummings that in fact was owned by different parties than the seller. Mr. Kelley's testimony will be based on his appraisal and evaluation of the property, a written report of which he is in the process of preparing and which will be available mid to late April. He will review pertinent materials, i.e. the various legal descriptions and any other relevant records to his analysis.

Mr. Kelley's qualifications and experience are attached and incorporated herein as exhibit "A." He will be paid \$3,500 for the appraisal and \$125 per hour for testimony. He has not testified in a case in the last four years.

Plaintiff reserves the right to further supplement this disclosure for the calling of rebuttal witnesses, or to address issues yet unknown that will be learned through discovery and further reserves the right to call any witness, expert or otherwise, designated or called by Defendants and/or Third Party Defendants.

DATED this 13th day of March, 2012.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 13th day of March, 2012, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

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Attorneys for Northern Title Company

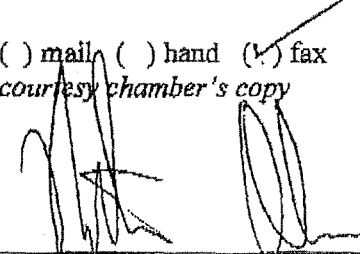
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Attorneys for Dorothy Julian, Evan Skinner, Ryan Olsen, and Exit Realty of Bear Lake, LLC

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() mail () hand (x) fax
courtesy chamber's copy



Nathan M. Olsen

Memorandum Reply

QUALIFICATIONS OF THE APPRAISER

GREGORY G. KELLEY

Idaho Certified General Appraiser: #32
Wyoming Certified General Real Estate Appraiser: #369
Past President, Idaho/Utah Chapter, ASFMRA 2008

GENERAL EDUCATION:

Shelley High School, Shelley, Idaho
Brigham Young University, Provo, Utah
Utah Technical College, Provo, Utah

WORK HISTORY:

Construction Coordinator, Three Fountains of Idaho Falls - 1976-1978
Self Employed; Building Contractor - 1977-1980
Administrator; OHC Dental Group - 1980-1985
Appraiser - Kelley Real Estate Appraisers, Inc. - 1985-Present

APPRAISAL EDUCATION & TRAINING:

Residential Appraisal Course; EIVTS, Idaho Falls 1977
Report Writing Seminar; Bozeman, Montana ASFMRA 1985
Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-1
Appraisal Course; University of Oklahoma, 1986 AIREA # 1A-2
Right-of-Way Training; Idaho Transportation Dept. Boise, Idaho - 1986
Mathematics of Finance Seminar, Twin Falls, ID ASFMRA 1988
Appraisal Course; Phoenix, Arizona, ASFMRA # A-20, 1988
Sales Analysis Seminar, Idaho Falls, ID ASFMRA, 1989
Standards of Professional Practice & Ethics, AIREA, Boise, Idaho 1990
Appraisal Course: Wichita, Kansas, ASFMRA # A-30, 1991
Certification School, Burley, ID, ASFMRA, # A-45, April 1991
Idaho Certified General Appraiser Exam, CGA # 32, June 1991
Highest and Best Use Seminar; Boise, Idaho, ASFMRA, January 1993
FIRREA Update - August 1994, Various Appraisal Seminars
Standards & Ethics, ASFMRA, Jackpot, NV, May 95
Rural Residential Appraisal Seminar, Jackpot, NV ASFMRA, May 1997
Conservation Easement Seminar, Denver, CO, ASFMRA, November 1998
Federal Land Exchange & Acquisition, Nashville, TN, ASFMRA, November 2000
Income Approach, Discounting & Leasing, Jackpot, NV ASFMRA, May 2003
Appraising Land in Transition Seminar, Jackpot NV ASFMRA, May 2004
USPAP Update Course, Idaho Falls, ID ASFMRA, January 2005
Water Rights Seminar, Idaho Falls, ID; ID/UT Chapter ASFMRA, January 2005
Livestock Ranch Appraisal Seminar, Jackpot, NV ASFMRA, May 2005
Various Current Appraisal Topic Seminar, Boise, ID; ID/UT ASFMRA, January 2006
USPAP Update Course, Twin Falls, ID ASFMRA, January 2006



Memorandum Reply

Code of Ethics, Twin Falls, ID ASFMRA, January 2006
 Understanding Conservation Easements, Atlanta, GA ASFMRA, February 2007
 Government Appraisal Seminar, Atlanta, GA ASFMRA, February 2007
 Recreational Properties Seminar, Atlanta, GA ASFMRA, February 2007
 2008 Appraisal Requirements, Atlanta, GA ASFMRA, February 2007
 Understanding the Next Farm Bill, Atlanta, GA ASFMRA, February 2007
 Mining Seminar, Jackpot, NV ASFMRA, May 2007
 Timber Seminar, Jackpot, NV ASFMRA, May 2007
 Yellow Book Seminar, Boise, ID Appraisal Institute, October 2007
 1031 Exchange Seminar, Salt Lake City, UT, Realtors Land Institute, January 2008
 Data Analysis Seminar, Jackpot, NV ASFMRA, May 2008
 Cost Estimating Seminar, Jackpot, NV ASFMRA, May 2008
 USPAP Update Course, Idaho Falls, ID; ASFMRA, January 2009
 Various Current Appraisal Topic Seminar, Idaho Falls, ID; ASFMRA, January 2009
 Wind Power & Conservation Easement Seminars, Boise, ID; ASFMRA, January 2010
 USPAP Update Course, Las Vegas, NV; Appraisal Institute, January 2011
 Appraisal of Nursing Home Facilities; On-line Course; Appraisal Institute, April 2011
 USPAP Update Course, Logan, UT; ASFMRA, January 2012

APPRAISAL ASSIGNMENTS INCLUDE THE FOLLOWING CLIENTS:

Attorneys	Major Lending Institutions
Accountants	Transfer Companies
Major Oil Companies	The Nature Conservancy
City of Idaho Falls	City of Pocatello
City of Driggs	Idaho Dept of Fish & Game
Idaho State Land Dept.	Idaho Transportation Dept.
Bureau of Land Management	Bureau of Reclamation
Internal Revenue Service	Small Business Administration
U.S. Forest Service	Farmers Home Administration
F.D.I.C.	Resolution Trust Corporation
U.S. Army Corps of Engineers	Utah Power and Light
Banks and Insurance Companies	Idaho Dept. Parks & Recreation
Teton Regional Land Trust	Union Pacific Railroad
Various other government agencies, companies and individuals	

Memorandum Reply

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DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2012 JUL 16 AM 10:49

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO.

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Aaron K. Bergman (I.S.B. 8878)
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bbearnson@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
residing in Montana,)
)
Plaintiff,)

Case No. CV-2009-183

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)
)
Defendants.)

**REPLY FOR NORTHERN TITLE'S
SECOND MOTION IN LIMINE &
REQUEST TO FILE OVER-LENGTH
REPLY BRIEF**

ROGER L. STEPHENS, an individual,)
)
Third Party Plaintiff,)

vs.)

DOROTHY JULIAN, an individual)
residing in Eagle, Idaho,)
)
Third Party Defendant.)

COMES NOW Defendant NORTHERN TITLE COMPANY OF IDAHO, INC.,
(hereinafter "Defendant"), through counsel of Bearnson & Caldwell, and hereby makes this Reply
for Northern Title's Second *Motion in Limine*.

I. NORTHERN TITLE'S MOTION IN LIMINE IS PROPERLY PLED, WHERE A MISTAKE HAS OCCURRED AND THE SCOPE AND PURPOSE OF PAROLE EVIDENCE IS A MATTER CONSIDERED BEFORE TRIAL.

First, Defendant Northern Title has standing to raise the issue of parole evidence on the warranty deed and thereby the Real Estate Purchase Contract ("REPC"). The exact intent of the REPC is a critical component to Northern Title's case. Under the Escrow General Provisions, Northern Title was required to ensure that the documents conformed to the "Real Estate Purchase Contract governing this transaction *and its intent*." See *Escrow General Provisions* at ¶ 20, attached hereto as Exhibit "A." (emphasis added). Similarly, Plaintiff's complaint against Northern Title is based largely on the REPC and its true intent. See *Pls. Second Compl.* at ¶¶ 65-66, 88. Further, the true intent of the REPC is a critical defense to Northern Title – namely that where the corrected warranty deed was in line with the true intent of the REPC, Cummings could not have been damaged by Northern Title's actions in filing the corrected warranty deed.

When the appropriate legal standards are understood, Northern Title's Second Motion in Limine is not a Rule 56 motion, as Plaintiff mistakenly suggests. In this case, there has clearly been a mistake. However, a mistake need not be proven before the admissibility of parole evidence becomes appropriate. As the Idaho Court of Appeals states, the "common law exception to the parole evidence rule . . . allows the use of extrinsic evidence when a party alleges that, by reason of mistake, the written instrument does not memorialize the true agreement of the parties." *Posey v. Ford Motor Credit Co.*, 141 Idaho 477, 482, 111 P.3d 162, 167 (Idaho App. 2005) (emphasis added); See also *Belk v. Martin*, 136 Idaho 652, 657, 39 P.3d 592, 537 (Idaho 2001) (holding a written agreement is complete on its fact if "no . . . mistake being alleged"). This doctrine and its application apply to deeds, where if a mutual or unilateral mistake regarding a

deed is proven through parole evidence at trial, reformation of a deed is warranted. See *West v. Bowen*, 127 Idaho 128, 130, 898 P.2d 59, 61 (1995) (“doctrine of merger does not apply where . . . there was a mistake”); see also *Belk v. Martin*, 136 Idaho 652, 657, 39 P.3d 592, 537 (Idaho 2001) (reforming rental lease on basis of unilateral mistake).

In Northern Title’s *Memorandum in Support of Second Motion in Limine*, several facts are laid out for the Court’s convenience. Because of this, Plaintiff construes Defendant’s arguments as one seeking summary judgment under Rule 56. This, however, is not the case. As is well understood, the defendant of any case, absent a counterclaim, does not “allege” facts in a complaint against the plaintiff. Therefore, the allegations must be made elsewhere. Here, Northern Title has raised these allegations, and supported it by the extensive record of this case. Based on these allegations of supported fact, the appropriateness of parole evidence is patent.

Just as an example, two different Real Estate Purchase and Sale Agreements are found within the record, both different, both having been faxed to Plaintiff Cummings. See Julian to Cummings REPC, attached hereto as Exhibit “B”; see also Skinner to Cummings REPC, attached hereto as Exhibit “C.” Oddly, the REPC faxed to Cummings from Julian contains no legal description, and is the only REPC signed by Three Bar Ranches. See Ex. “B.” Similarly odd, the REPC faxed from Skinner never has and never will contain the signature of the seller, Roger Stephens. See Ex. “C.” The REPC provided to Cummings’ courtesy 1031 closing office was indeed that same REPC never signed by the seller Roger Stephens. See Closing REPC, attached hereto as Exhibit “D” (this document was obtained by subpoena from the 1031 exchange office).

To this date, the only REPC signed by Three Bar Ranches is that REPC attached hereto as Exhibit “B,” being originally faxed between Julian and Cummings. Again, this REPC contains

no legal description. In his affidavit, Steven Cummings states that he received a more complete REPC from Evan Skinner. See *Northern Title's Mem. in Support 2nd Mot. Limine*, Ex. "T," ¶ 5. This more "complete" REPC is the same as that attached hereto as Exhibit "B," as Cummings verifies in his deposition he relied on. See Cummings Depo., 80:20-82:19 attached hereto as Exhibit "E." Again, this more "complete" REPC that Cummings' avers he was relying on contains only his initials and signature, and contains not a single initial or signature by Three Bar Ranches. See Ex. "C."

Therefore, the record shows there is no legal description that Cummings can contractually rely on in the REPC, and on top of that, both the seller Mr. Stephens, all of the Realtors and the Title Company understood the sale to include only property west of Highway 30. This fact is supported by numerous affidavits filed in Northern Title's *Memorandum in Support of Second Motion in Limine*. Now obviously, Cummings disputes these facts. But that does not bar the appropriateness of parole evidence on the basis of a mistake. Parole evidence rarely if ever becomes an issue without a factual dispute. Therefore, Northern Title's *Second Motion in Limine* merely provides facts to assist the Court in determining a properly alleged mistake has arisen in the deed, and therefore parole evidence is warranted. These supported facts, contrary to Plaintiff's allegations, have all previously been produced. See *Aaron Bergman Affidavit*, attached hereto as Exhibit "F."

Where a mistake has been appropriately alleged and even supported by the record, the Court should allow parole evidence to discover the true intent of the parties. However, just because parole evidence is admissible for one purpose, it does not follow that parole evidence is open for every purpose.

II. THE DUTIES OF NORTHERN TITLE AS AN ESCROW AGENT SHOULD BE APPROPRIATELY LIMITED TO THOSE FOUND IN THE CONTRACT.

The Court should limit the testimony arguments presented regarding Northern Title's duties as an escrow agent to those found within the contract. This concern became first apparent during the deposition of Plaintiff's expert, Lenore Katri, wherein she testified of duties and obligations that were either not found in the written agreement between the parties, or were actually directly contrary to the written agreement. Such testimony should not be allowed, as courts have strictly limited an escrow agent's duties to those found expressly in the contract. See e.g. *Foreman*, 83 Idaho at 486; see also *Barron*, 97 Idaho at 311-312, 543, P.2d at 864-865.

Plaintiff argues that on one hand Northern Title's duties were limited by contract, but on the other, Plaintiff is required to comply with the requirements and regulations set forth in the Idaho Escrow Act. In support of such, Plaintiff cites a few random cases that have nothing to do with escrows or the creation of an affirmative cause of action under statute. Rather, each case involves an "illegal" contract found entirely void by the court. See *Pines Grazing Ass'n v. Flying Joseph Ranch, LLC*, 151 Idaho 924, 927-930, 265 P.3d 1136, 1139-1142 (Idaho 2011) (court determines oral agreement is illegal under the Federal Sherman Act prohibiting restraints on trade and commerce); see also *Taylor v. AIA*, 151 Idaho 552, 564-565, 261 P.3d 829 (Idaho 2011) (court finds stock redemption illegal without earned surplus or shareholder approval); see also *Quiring v. Quiring*, 30 Idaho 560, 566-567, 944 P.2d 695, 701-702 (Idaho 1997) (court finds quitclaim deed illegal where spouse prompts signature by promising husband not to report sexual misconduct). Plaintiff then misquotes Idaho Code section 30-931, arguing this provision gives Plaintiff a right to its claims under the Act, where in reality, the provision merely states the Act does not preclude

already existing claims found elsewhere.

While difficult to discern, Plaintiff's argument appears to be that the duties and obligations under the Idaho Escrow Act should be raised in testimony, because any provisions in the Escrow General Provisions that states otherwise are "illegal." Plaintiff's argument is fatally flawed. As pointed out in Northern Title's *Memorandum in Support of Second Motion in Limine*, the Idaho Legislature has expressly excluded Northern Title from the Idaho Escrow Act. Under section 30-905, the Idaho Legislature has declared that the "requirements of this chapter do not apply to . . . Title insurance companies having a valid certificate of authority, and title insurance agents having a valid license as a title insurance agent, issued by the Idaho department of insurance." I.C. 30-905(3). Northern Title has only brought claims against Northern Title, and none of its individual agents. Northern Title has already supplied the Court with certificates of authority, evidencing Northern Title's exclusion from the Act. See *Northern Title's Mem. in Support of 2nd Mot. Limine*, Ex. "V."

Where the duties and obligations of Northern Title are governed strictly by contract, and where the Idaho Escrow Act is inapplicable, the testimony and arguments provided at trial must be limited to those duties and obligations contained within the actual General Escrow Provisions and/or instructions received in accordance therewith.

III. PLAINTIFF CANNOT RELY ON THE TITLE COMMITMENTS ISSUED TO THREE BAR RANCHES AS A BASIS FOR HIS OWNER'S POLICY OF TITLE INSURANCE WITH NORTHERN TITLE.

As Cummings points out, his claims against Northern Title in regards to title insurance are founded in contract. Therefore, the law of contracts applies. Cummings does not seek a mere reformation of an existing contract. Rather, Cummings argues that the title commitments issued

to Three Bar Ranches were actually intended for him, and as such, he can rely on the title commitments to change the terms of his Owner's Policy of Title Insurance. Where Cummings seeks to transpose a previous title commitment contract, made to an entirely different person, for his own benefit, Cummings must prove his case under the doctrine of novation.

Novation is not mere reformation, but is the "act of substituting . . . an original party with a new party." *Black's Law Dictionary*, 496 (3d ed. 2001). While parties may consent to an assignment, "consent to an assignment is not enough." *Warm Springs Development Associates, Ltd. Partnership v. Burrows*, 120 Idaho 280, 284, 815 P.2d 478, 482 (Idaho App. 1991). Also, it is insufficient for a party to a contract for "x" to merely act like the contract was made for "y." *Independent School Dist., Call A, No. 1, in Cassida County, v. Porter*, 228 P. 253, 253-257 (Idaho 1924). In Idaho, novation must be assented to by all parties. *Id.* at 255-256 (1924); see also *First Nat. Bank in Evanston v. Sims*, 78 Idaho 286, 290 (Idaho 1956); see also *Heckman v. Boise Valley Livestock Commission Co.*, 92 Idaho 862, 864, 852 P.2d 359, 361 (Idaho 1969). Further, novation must be "clearly established" and "express." *Warm Springs Development*, 120 Idaho 280, 284, 815 P.2d 478, 482 (Idaho App. 1991).

Here, the express provisions of the Title Commitments limit those commitments to Three Bar Ranches. See *Northern Title's Mem. Supp. 2nd Mot. Limine*, Ex. I and J. In addition, the *Owner's Policy of Title Insurance* issued to Cummins contained a integration clause, excluding all prior agreements. *Id.* at Ex. "S," ¶ 15. Further, statute requires that each title insurance policy shall name the name of the insured and be executed as such by the insurer. See I.C.A. §§ 41-1815(1) and I.C.A. § 41-1819(1). Based on the previous cases cited by Cummings regarding illegal contracts due to violation of statute, the title commitments as to Cummings are also null and

void per the Idaho Legislature.

If Cummings is to rely on title commitments never issued to him as a means to enforce his *Owner's Policy of Title Insurance*, then he must prove the elements of novation, which he has not. As such, the Court should not allow Cummings to use against Northern Title title commitments that were never expressly issued to him.

IV. CUMMINGS HAS MISQUOTED THE ESCROW GENERAL PROVISIONS; WHEN CORRECTLY QUOTED, THE PROVISION LIMITING LIABILITY IS CLEARLY APPLICABLE TO THIS ACTION.

Cumming cites to only a portion of the relevant provision to argue that Northern Title's contractual limitation on liability only extends to "an action in interpleader." See *Pl's. Mem. Opp. to 2nd Mot. Limine*, 4, 10 (July 10, 2012). In reality, this is not what the provision states at all:

If Escrow agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file and [sic] action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

Ex. "F," Escrow General Provisions at ¶ 17.

While the provision gives Northern Title the right to bring an action "in interpleader" to require the respective parties to litigate their claims, that portion of the provision unambiguously excludes claims brought directly against Northern Title, where the parties further agreed to fully

indemnify and discharge Northern Title's duties if an action in interpleader is brought. On the other hand, the remainder of the provision makes clear that when an action is not brought between the parties (i.e. buyer and seller), but directly against Northern Title, that the parties waive all liability except that arising out of gross negligence/willful misconduct.

The provision limiting liability against Northern Title is acutely applicable to Plaintiff's action, wherein Plaintiff has brought no claims against Stephens on the basis of the escrow contract, but rather has brought claims directly against Northern Title. As such, Plaintiff should not be allowed to lower his legally and contractually heightened burden.

CONCLUSION

The existence of either a mutual or unilateral mistake has been alleged, and is apparent by facts produced from the record. As such, the Court should allow parole evidence to discover the true intent of the parties as to the Real Estate Purchase Contract. However, just because parole evidence is admissible on purpose does not mean that parole evidence is suddenly admissible for all purposes.

First, Northern Title's duties as Escrow Agent are governed strictly by contract. The Idaho Escrow Act is inapplicable, as Northern Title has been expressly excused from its provisions. Therefore, the testimony and arguments made against Northern Title must be limited to those duties and obligations contained within the actual General Escrow Provisions and/or instructions received in accordance therewith.

Second, while the title commitments are certainly relevant in proving the true intent of the REPC and in Defendants' defenses of mistake, Cummings cannot rely on those title commitments as a means to change the terms of his Owner's Policy of Title Insurance. The title commitments

Reply for Northern Title's Second Motion in Limine

Case No. CV-09-183

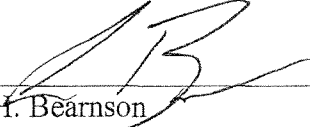
Page 9

were never issued to Cummings, and by statute are unenforceable by Cummings. Where Cummings has failed to prove the elements of novation, the Court should not allow him to use against Northern Title title commitments never expressly issued to him.

Finally, when appropriately and completely quoted, the Escrow General Provisions properly heighten Cummings' burden against Northern Title in its capacities as escrow agent to gross negligence/willful misconduct.

DATED this 3th day of July, 2012.

BEARNSON & CALDWELL, LLC



Brad H. Bearnsen
Aaron K. Bergman
Attorneys for Defendant Northern Title

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of July, 2012, I served a true and correct copy of the above and foregoing **REPLY FOR NORTHERN TITLE'S SECOND MOTION IN LIMINE AND REQUEST TO FILE OVER-LENGTH REPLY BRIEF** to the following person(s) as follows:

Nathan M. Olsen	<input checked="" type="checkbox"/>	U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	<input type="checkbox"/>	Hand Delivery
485 "E" Street	<input type="checkbox"/>	Overnight Mail
Idaho Falls, Idaho 83402	<input type="checkbox"/>	Facsimile (208-524-3391)
	<input checked="" type="checkbox"/>	Email (Nathan@pmholaw.com)
Randall C. Budge	<input checked="" type="checkbox"/>	U.S. Mail/Postage Prepaid
Jason E. Flaig	<input type="checkbox"/>	Hand Delivery
RACINE, OLSON, NYE, BUDGE &	<input type="checkbox"/>	Overnight Mail
BAILEY, CHARTERED	<input type="checkbox"/>	Facsimile (435-752-6301)
P.O. Box 1391; 201 E. Center Street	<input checked="" type="checkbox"/>	Email rcb@racinelaw.net
Pocatello, Idaho 83204-1391		jef@racinelaw.net

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EXHIBIT "A"

ESCROW GENERAL PROVISIONS

This agreement governs the duties and obligations between Northern Title Company of Idaho (hereinafter "Escrow Agent") and the undersigned signatories, who are parties to the following transaction.

Order No.: NTBL-1183

Address: MONTEPLIER, ID

Buyer(s): STEVEN B. CUMMINGS,

Seller(s): ROGER L. STEPHENS TRUSTEE and BARBARA L. STEPHENS TRUSTEE TRUST

The Parties understand and acknowledge:

1. Escrow Agents Role

Subject to the terms of this agreement, Escrow Agent agrees to act as an escrow agent in closing the transaction described above. Escrow Agent is not the agent of any single party. Rather, Escrow Agent agrees to prepare documents, secure the execution of documents, record documents, disburse funds, and otherwise close the transaction in the accordance with the joint directions of the parties. Escrow Agent has no other duties or obligations. In particular, Escrow Agent does not give and has no duty to give legal or other advice to the parties.

2. Parties' Role

The parties authorize Escrow Agent to close the transaction, record documents, disburse funds, and otherwise act in accordance with the written Settlement Statement and any written or oral directions or agreements given to Escrow Agent by the parties or their representatives. The parties agree that Escrow Agent is entitled to act on the direction of the realtor, attorney or other person who has dealt with Escrow Agent on behalf of them in this transaction. If any party wishes to limit the authority of those who have dealt on their behalf with Escrow Agent, any such limitation must be contained in a writing that is delivered to Escrow Agents. *The parties agree that they are not looking to Escrow Agent for legal or other advice, and that they had an opportunity to obtain such advice from persons other than those affiliated with Escrow Agent.*

3. Closing Documents

The parties have been given an opportunity to review all documents at closing and to seek independent advice or counsel concerning those documents, if desired. The parties agree that the only representations of Escrow Agent upon which they are entitled to rely or act are those that are in writing and executed by Escrow Agent and that the parties are not entitled to act or rely on conflicting oral or written terms or directions given to Escrow Agent prior to closing. The parties' execution and delivery of documents at closing shall, as between Escrow Agent and the parties, constitute the parties' agreements and directions to Escrow Agent whether or not Escrow Agent is a party to the documents. The terms of this paragraph shall not affect the parties' rights between themselves.

4. Deposit of Funds, Recording & Disbursements

The undersigned **BUYER** and **SELLER** hereby approve the foregoing statement and authorize **NORTHERN TITLE COMPANY OF IDAHO** to complete the transaction in accordance herewith. The instruments may be delivered or recorded and funds disbursed. Escrow Agent shall place all funds received in escrow into a federally insured depository account specifically designated as a trust account. Escrow Agent may maintain a general trust account and individual accounts for specific escrows, subject to any specific terms and conditions of any written agreement between Buyer, Seller, and Escrow Agent. Absent specific written direction from both Seller and Buyer, Escrow Agent shall, as agent for Buyer and Seller, determine the identity of the depository institution. Escrow Agent shall not be responsible for any loss of funds occurring as a result of failure of the institution in which funds have been deposited, so long as Escrow Agent complies with the foregoing provisions relating to the type of depository institutions and accounts to be used. Earnings on funds held in Escrow Agent's escrow trust account shall be owned by and periodically disbursed to Escrow Agent as additional consideration for services actually performed by Escrow Agent. Funds may be paid from trust accounts only in accordance with the terms and conditions of Buyer's and Seller's instructions to Escrow Agent. In the event that Escrow Agent initiates or is joined as a party to any litigation relating to this escrow, Buyer and Seller jointly and severally agree to pay all costs, expenses and attorney's fees incurred by Escrow Agent in such litigation. Escrow Agent shall be entitled, at its option, to be paid such costs, expenses and the attorney's fees from the funds deposited by the party(ies) with Escrow Agent.

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5. Disclosure of Possible Benefits to Escrow Agent

As a result of Escrow Agent maintaining its general escrow accounts with the depositories, Escrow Agent may receive certain financial benefits such as an array of bank services, accommodations, loans or other business transactions from depositories ("collateral benefits"). All collateral benefits shall accrue to the sole benefit of Escrow Agent and Escrow Agent shall have obligation to account to the parties to this escrow for the value of any such collateral benefits.

6. Miscellaneous Fees

The Settlement Statement may prescribe that certain release or reconveyance fees are payable to Escrow Agent. These fees are payable to Escrow Agent to compensate it for facilitating and arranging for the reconveyance or release of the encumbrance in question and are payable in the amounts indicated irrespective of whether additional reconveyance fees or charges may have been paid or are payable to any other party and irrespective of any limitation on reconveyance or release fees that may be prescribed. Escrow Agent may incur certain additional costs of behalf of the parties for services performed by third party providers. The fees charged by Escrow Agent for such services may include a mark up over the direct cost of such services to reflect the averaging of direct, administrative and overhead charges of Escrow Agent for such services.

7. Prorations & Adjustments

The term "close of escrow" means the date on which documents are recorded. All pro-rations and/or adjustments shall be made as of the close of escrow based on a 30-day month, unless otherwise instructed in writing.

8. Contingency Periods

Escrow Agent shall not be responsible for monitoring contingency time periods between the parties. The parties shall execute such documents as may be requested by Escrow Agent to confirm the status of any such periods.

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9. Reports

As an accommodation, Escrow Agent may agree to transmit orders for inspection, termite, disclosure and other reports if requested, in writing or orally, by the parties or their agents. Escrow Agent shall deliver copies of any such reports as directed. Escrow Agent is not responsible for reviewing such reports or advising the parties of the content of same.

10. Information from Affiliated Companies

Escrow Agent may provide the parties' information to and from its affiliates in connection with the offering of products and services from these affiliates.

11. Commitment for Title Insurance; Recordation of Documents

The undersigned Buyer hereby acknowledges receipt of a copy of, and an opportunity to review, Commitment for Title Insurance referenced as Order No. NTBL-1183 (the "Commitment") obtained through Escrow Agent in the contemplation of the above transaction, and authorizes the title insurer to issue the policy of title insurance contemplated thereby, which policy shall contain the following numbered exceptions from coverage: 1-11; as shown on the Commitment in addition to any new encumbrances created in connection with this transaction. The undersigned Buyer and Seller affirm that the legal description appearing in the commitment is satisfactory, and authorize Escrow Agent to record documents delivered through escrow which contain said legal description(s) necessary or proper for the issuance of the requested title insurance policy(ies).

12. Personal Property Taxes

No examination, UCC search, insurance as to personal property and/or the payment of personal property taxes is required unless otherwise instructed in writing.

13. Real Property Taxes

The undersigned Buyer and Seller do hereby understand and agree that the proration for general property taxes as provided in the above referenced closing statements, was calculated by utilizing the general property taxes assessed for the year 2006. Accordingly, the Buyer(s) and Seller(s) do hereby hold Escrow Agent free and harmless from any liability or damages caused by an inaccurate proration for general property taxes assessed for the current year. Upon a determination of the assessed property taxes due for the current year, Buyer(s) and Seller(s) agree to make the proper proration adjustment as may required subsequent to closing.

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14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/ chosen not to) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold **NORTHERN TITLE COMPANY OF IDAHO** and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: BENNINGTON IRRIGATION COMPANY Number of shares: 900

Company: MONTPELIER IRRIGATION COMPANY Number of shares: 100

• Buyer/Seller will transfer the water shares outside of closing and will not hold **NORTHERN TITLE COMPANY OF IDAHO** responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction. If no action is taken on this escrow within 6 months after the closing date specified in the escrow instructions, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

17. Conflicting Instructions & Disputes

If Escrow Agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file an action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

18. Usury

Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

19. Insurance Policies

In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance:

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.

21. Copies of Documents; Authorization to Release**NOR0368**

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14. Survey

The undersigned buyers and sellers hereby acknowledge that they have (chosen to/ ^{RLD} ~~chosen not to~~) have a survey completed on subject property. If not, the undersigned buyers and sellers affirm that the legal description on the closing documents of even date herewith is satisfactory, and the undersigned herein agree to hold **NORTHERN TITLE COMPANY OF IDAHO** and the undersigned Real Estate Company harmless as to any dispute resulting from not having a survey done at the time of the transaction.

15. Utilities and Water Rights

Escrow Agent shall not be responsible for the transfer of utilities. Escrow Agent shall not be responsible for the transfer of water rights or shares. The parties understand that they will have all utilities read and transferred as of the date of possession. Water shares and or rights are not being transferred in connection with this transaction.

Company: BENNINGTON IRRIGATION COMPANY Number of shares: 900

Company: MONTPELIER IRRIGATION COMPANY Number of shares: 100

• Buyer/Seller will transfer the water shares outside of closing and will not hold **NORTHERN TITLE COMPANY OF IDAHO** responsible for any shares transferred incorrectly.

Northern Title Company of Idaho has no knowledge of the fees and/or dues associated with the water rights. If you want any further information you need to contact the secretary of the water company.

16. Cancellation of Escrow

Any party desiring to cancel this escrow shall deliver written notice of cancellation to Escrow Agent. Within a reasonable time after receipt of such notice, Escrow Agent shall send by standard mail to the address on the escrow instructions, one copy of said notice to the other party(ies). Unless written objection to cancellation is delivered to Escrow Agent by a party within 10 days after date of mailing, Escrow Agent is authorized, at its option, to comply with the notice and terminate the escrow. If a written objection is received by Escrow Agent, Escrow Agent is authorized, at its option, to hold all funds and documents in escrow (subject to the funds held fee) and to take no other action until otherwise directed by either the parties' mutual written instructions or a final order of court of competent jurisdiction, Escrow Agent's obligations shall, at its option, terminate. Upon termination of this escrow, the parties shall pay all fees, charges and reimbursements due to Escrow Agent and all documents and remaining funds held in escrow shall be returned to the parties depositing same.

17. Conflicting Instructions & Disputes

If Escrow Agent becomes aware of any conflicting demands or claims concerning this escrow, Escrow Agent shall have the right to discontinue all further acts on Escrow Agent's part until the conflict is resolved to Escrow Agent's satisfaction. Escrow Agent has the right at its option to file and action in interpleader requiring the parties to litigate their claims/rights. If such an action is filed, the parties jointly and severally agree (a) to pay Escrow Agent's reasonable attorney's fees, and (b) that Escrow Agent is fully released and discharged from all further obligations under the escrow. If an action is brought involving this escrow and/or Escrow Agent, the parties agree to indemnify and hold the Escrow Agent harmless against liabilities, damages and costs incurred by Escrow Agent (including reasonable attorney's fees and costs) except to the extent that such liabilities, damages and costs were caused by the gross negligence or willful misconduct of Escrow Agent.

18. Usury

Escrow Agent is not to be concerned with usury as to any loans or encumbrances in this escrow and is hereby released of any responsibility and/or liability therefor.

19. Insurance Policies

In all matters relating to insurance, Escrow Agent may assume that each policy is in force and that the necessary premium has been paid. Escrow Agent is not responsible for obtaining fire, hazard or liability insurance, unless Escrow Agent has received specific written instructions to obtain such insurance prior to close of escrow from the parties or their respective lenders.

20. Compliance:

The undersigned hereby further agree, if required by closing agent, to cooperate and adjust clerical errors, and or further documentation which may be deemed necessary to comply with any Real Estate Purchase Contract governing this transaction and it's intent.

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Escrow Agent is authorized to rely upon copies of documents, which include facsimile, electronic, NCR, or photocopies as if they were an originally executed document. If requested by Escrow Agent, the originals of such documents shall be delivered to Escrow Agent. Escrow Agent may withhold documents and/or funds due to the party until such originals are delivered. Documents to be recorded MUST contain original signatures. Escrow Agent may furnish copies of any and all documents to the lender(s), real estate broker(s), attorney(s) and/or accountant(s) involved in this transaction upon their request.

22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. **WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES. ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.**

A. Taxpayer Identification Number Reporting

Federal law requires Escrow Agent to report Seller's social security number and/or tax identification number, forwarding address, and the gross sales price to the Internal Revenue Service ("IRS"): Escrow can not be closed nor any documents recorded until the information is provided and Seller certifies its accuracy to Escrow Holder.

B. Federal Withholding & Reporting

Certain federal reporting and withholding requirements exist for real estate transactions where the seller (transferor) is a non-resident alien, a non-domestic corporation or partnership controlled by non-residents or non-resident corporations or partnerships.

C. Taxpayer Identification Disclosure

Parties to a residential real estate transaction involving seller-provided financing are required to furnish, disclose, and include taxpayer identification numbers in their tax returns. Escrow Agent is not required to transmit the taxpayer I.D. numbers to the IRS of the parties. Escrow Agent is authorized to release any party's taxpayer I.D. numbers to any other party upon receipt of a written request. The parties waive all rights of confidentiality regarding their taxpayer I.D. numbers and agree to hold Escrow Agent harmless against any fees, costs, or judgments incurred and/or awarded because of the release of taxpayer I.D. numbers.

23. Privacy Policy

The undersigned Buyer and Seller hereby acknowledge receipt of a copy of the Privacy Policy of Northern Title Company and Escrow Agent.

24. Legal Counsel

The undersigned acknowledge that they have the right to seek legal counsel and tax advice in connection with this transaction. I/we the undersigned real estate salesperson/broker have reviewed the foregoing statement and certify that the above mentioned statement is accurate accounting of the transaction(s) between buyer and seller herein.

I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-1 Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.

Listing Agent/Broker



Selling Agent/Broker



STEVEN B. CUMMINGS

ROGER L. STEPHENS TRUSTEE

BARBARA L. STEPHENS TRUSTEE

"Escrow Agent":
NORTHERN TITLE COMPANY OF IDAHO

BY: 

21. Copies of Documents; Authorization to Release

Escrow Agent is authorized to rely upon copies of documents, which include facsimile, electronic, NCR, or photocopies as if they were an originally executed document. If requested by Escrow Agent, the originals of such documents shall be delivered to Escrow Agent. Escrow Agent may withhold documents and/or funds due to the party until such originals are delivered. *Documents to be recorded MUST contain original signatures.* Escrow Agent may furnish copies of any and all documents to the lender(s), real estate broker(s), attorney(s) and/or accountant(s) involved in this transaction upon their request.

22. Tax Reporting, Withholding & Disclosure

The parties are advised to seek independent advice concerning the tax consequences of this transaction, including but not limited to, their withholding, reporting and disclosure obligations. Escrow Agent does not provide tax or legal advice and the parties agree to hold Escrow Agent harmless from any loss or damage that the parties may incur as a result of their failure to comply with federal and/or state tax laws. **WITHHOLDING OBLIGATIONS ARE THE EXCLUSIVE OBLIGATIONS OF THE PARTIES. ESCROW AGENT IS NOT RESPONSIBLE TO PERFORM THESE OBLIGATIONS UNLESS ESCROW AGENT AGREES IN WRITING.**

A. Taxpayer Identification Number Reporting

Federal law requires Escrow Agent to report Seller's social security number and/or tax identification number, forwarding address, and the gross sales price to the Internal Revenue Service ("IRS"). Escrow can not be closed nor any documents recorded until the information is provided and Seller certifies its accuracy to Escrow Holder.

B. Federal Withholding & Reporting

Certain federal reporting and withholding requirements exist for real estate transactions where the seller (transferor) is a non-resident alien, a non-domestic corporation or partnership controlled by non-residents or non-resident corporations or partnerships.

C. Taxpayer Identification Disclosure

Parties to a residential real estate transaction involving seller-provided financing are required to furnish, disclose, and include taxpayer identification numbers in their tax returns. Escrow Agent is not required to transmit the taxpayer I.D. numbers to the IRS of the parties. Escrow Agent is authorized to release any party's taxpayer I.D. numbers to any other party upon receipt of a written request. The parties waive all rights of confidentiality regarding their taxpayer I.D. numbers and agree to hold Escrow Agent harmless against any fees, costs, or judgments incurred and/or awarded because of the release of taxpayer I.D. numbers.

23. Privacy Policy

The undersigned Buyer and Seller hereby acknowledge receipt of a copy of the Privacy Policy of Northern Title Company and Escrow Agent.

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The undersigned acknowledge that they have the right to seek legal counsel and tax advice in connection with this transaction. I/we the undersigned real estate salesperson/broker have reviewed the foregoing statement and certify that the above mentioned statement is accurate accounting of the transaction(s) between buyer and seller herein.

I/We, the undersigned Real Estate Agents/Brokers have reviewed this statement and all other related closing documents including the HUD-1 Settlement Statement and certify that the documents are an accurate accounting of the transaction reflecting the agreements, by both Buyer and Seller, as stated in the Real Estate Purchase Contract.


Listing Agent/Broker

Selling Agent/Broker

STEVEN B. CUMMINGS


ROGER L. STEPHENS TRUSTEE


BARBARA L. STEPHENS TRUSTEE

"Escrow Agent":
NORTHERN TITLE COMPANY OF IDAHO

BY: 

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EXHIBIT "B"

Reply NT 2nd motu

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196 South 4th Street
 Montpelier, Idaho 83254

Office (208) 847-3200
 Fax (208) 847-3203

Facsimile Transmittal Sheet

FROM:

DOT

TO:

Steve Cummings DATE: 7/26

FAX NUMBER

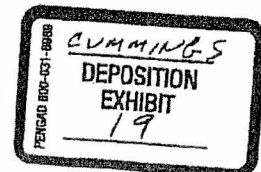
801 756 3150

NUMBER OF PAGES (INCLUDING COVER)

9

COMMENTS

Stephen's Contract





RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 ID# ES070207 B DATE 7-20-07

2

3 LISTING AGENCY Exit Realty of B.L. Office Phone # _____ Fax # _____

4 Listing Agent Dorothy Rooks E-Mail _____ Phone # _____

5 SELLING AGENCY Exit Realty of B.L. Office Phone # 207-3200 Fax # 207-3203

6 Selling Agent Evan Spence E-Mail _____ Phone # _____

7

8 1. BUYER: Three Bar Ranches Inc - (Hereinafter called

9 "BUYER") agrees to purchase, and life undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"

10 COMMONLY KNOWN AS Stephens Ranch City Manvel

11 Bean Lake County, ID, Zip _____ legally described as: See Attachment one

12 OR Legal Description Attached as addendum # _____ (Addendum must accompany original offer.)

13

14 2. \$ 700,000 PURCHASE PRICE: Seven Hundred Thousand DOLLARS,

15 payable upon the following TERMS AND CONDITIONS (not including closing costs):

16

17 3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

18 \$ 1000.00 (A). EARNEST MONEY: BUYER hereby deposits One Thousand DOLLARS as

19 Earnest Money evidenced by: cash personal check cashier's check note (due date): _____

20 other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited

21 in trust account upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker

22 other _____ for the benefit of the parties hereto. The responsible Broker shall be _____

23

24 (B). ALL CASH OFFER: NO YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with

25 "0" (ZERO.) IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY.

26 BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of

27 sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or

28 financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

29

30 (C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:

31 \$ _____ not including mortgage insurance, through FHA, VA, CONVENTIONAL, IHFA,

32 RURAL DEVELOPMENT, OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate

33 Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s).

34 Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

35

36 SECOND LOAN OF \$ _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate

37 Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any

38 reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

39

40 LOAN APPLICATION: BUYER has applied shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____

41 business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of

42 credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender

43 underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this

44 agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does

45 not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval

46 and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required

47 by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER

48 may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are

49 fulfilled, and the new loan does not increase the costs or requirements to the SELLER

50

51 FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the

52 purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in

53 accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct

54 Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees

55 required by FHA or VA.

56

57 ~~\$202,000~~ (D). ADDITIONAL FINANCIAL TERMS:

58 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).

59 Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.

60 Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.

61

62 \$ 202,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing

63 to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any

64 of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s)

65 shall be adjusted at closing as escrow in: Cash Other: _____

66

67 BUYER'S Initials (CR) Date 7/2/07 SELLER'S Initials (AA) Date 7-5-07

Copy

Nov 14 11:22 AM '07

1398

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 2 of 6 JULY, 2005 EDITION

PROPERTY ADDRESS: Stephens Ranch Hwy 30 IDB: 5070207 B

4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing

Excluded is all available water from Bennington + municipal
Installation + all available oil + personal. NO Show of municipal
at 900 shows of Bennington town.
CNDP TO stay with leader for 2007.

Adoption has not been successful counting to when approved coming in.
at purchase price + home TO BE inspected + presence TO buyers approval.
Buyers TO have option TO DO a 1051 exchange.

5. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television antennas, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, venting, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the condition of the included items is acceptable. It is agreed that any item included in this section is of nominal value less than \$100.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Disc 4385 Tractor PIT
immediately. All furniture in home that seller will take to leave.
All available wheel lines + all hand tools.

(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:

6. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

7. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.

(A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have _____ business day(s) from receipt of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within _____ business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). TITLE COMPANY: The parties agree that Northern Title Title Company located at _____ shall provide the title policy and preliminary report of commitment.

(C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILLA/ALTA Owner's Policy of Title Insurance. A title company, at BUYER'S request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Closing Agency in writing and pay any increase in cost unless otherwise provided herein.

(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the General Contractor Disclosure Statement.

BUYER'S Initials (SB) () Date 7/02/07 SELLER'S Initials (R.S. x P.S.) Date 7-5-07

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 4 of 6 JULY, 2008 EDITION

PROPERTY ADDRESS: Stephens

ID#: BS070207 B

16. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ _____ of lender required repair costs only, BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

	BUYER	SELLER	Shared Equally	N/A		BUYER	SELLER	Shared Equally	N/A
Appraisal Fee	X				Title Ins. Standard Coverage Owner's Policy		X		
Appraisal Re-inspection Fee				X	Title Ins. Extended Coverage Lender's Policy -- Mortgage Policy				X
Closing Escrow Fee			X		Additional Title Coverage				X
Lender Document Preparation Fee				X	Fuel In Tank -- Amount to be Determined by Supplier				X
Tax Service Fee				X	Well Inspection				X
Flood Certification/Tracking Fee				X	Septic Inspections				X
Lender Required Inspections				X	Septic Pumping				X
Attorney Contract Preparation or Review Fee				X	Survey				X

17. OCCUPANCY: BUYER does does not intend to occupy property as BUYER'S primary residence.

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the premises approximately _____ calendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) Sept 1, 07. The parties agree that the CLOSING AGENCY for this transaction shall be NORTHERN TITLE located at _____. If a long-term escrow / collection is involved, then the long-term escrow holder shall be _____.

21. POSSESSION: BUYER shall be entitled to possession upon closing or date _____ time _____ A.M. P.M. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of Closing Date.

22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

BUYER'S Initials (JS) (X) _____ Date 7/02/07 SELLER'S Initials (R.S.) (X) AB. Date 7-5-07

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 5 of 6 JULY 2006 EDITION

PROPERTY ADDRESS: Springwood Ranch ID#: LS070207B

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 73-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled:

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

- Section 1:
- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
 - B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
 - C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
 - D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

- Section 2:
- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
 - B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
 - C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
 - D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials (SS) () Date 7/2/07 SELLER'S Initials (RL) (HL) Date 7-2-07

Reply NT 2nd Motu

1402

RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 8 of 8 JULY 2006 EDITION

PROPERTY ADDRESS: Stephens Ranch ID#: ES070207B

32. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) July 16, 07 at (Local Time in which property is located) 5 A.M. P.M. If SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

36. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

BUYER Signature Three-Bar Stables, LLC

BUYER (Print Name) _____

Date 7/16/07 Time 11:28 A.M. P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

BUYER Signature _____

BUYER (Print Name) _____

Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

37. SELLER'S SIGNATURES:

On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER

SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # _____

SELLER Signature _____

SELLER (Print Name) _____

Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

Address 436 W Copperton Dr

City Phoenix State AZ Zip 85032

E-Mail Address _____

Fax # _____

SELLER Signature _____

SELLER (Print Name) _____

Date _____ Time _____ A.M. P.M.

Phone # _____ Cell # _____

Address _____

City _____ State _____ Zip _____

E-Mail Address _____

Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____

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1403



RE- 13 COUNTER OFFER # 012 (1, 2, 3, etc.)



THIS COUNTER OFFER SUPERCEDES ALL PRIOR COUNTER OFFERS

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is a COUNTER OFFER to the Purchase and Sale Agreement Dated: 7-2-07
 2 ADDRESS: Stephens Ranch ID# _____
 3 BUYER: _____
 4 SELLER: Stephens Family Trust
 5 The parties accept all of the terms and conditions in the above-designated Purchase and Sale Agreement with the following changes:
 6 This is a SELLER counter offer. The SELLER reserves the right to withdraw this offer or accept any other offers prior to the receipt of a
 7 true copy of signed acceptance of this Counter Offer within the time frame specified herein.
 8 This is a BUYER counter offer. The undersigned BUYER reserves the right to withdraw this offer at any time prior to the receipt of a true
 9 copy of signed acceptance of this Counter Offer within the time frame specified herein.
 10 PURCHASE PRICE \$ 800,000 EIGHT HUNDRED THOUSAND DOLLARS
 11 DOWN PAYMENT 1/3 OF \$ 800,000 (\$ 266,667)
 12 CARRY BALANCE OF \$ 533,333 ON 10 YEAR CONTRACT AT 8 1/2% INTEREST
 13 EARNEST MONEY DOWN \$ 3,000
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 3%
 26 28,000 - 50,000.

27 To the extent the terms of this Counter Offer modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
28 Addendums, the terms in this Counter Offer shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums
29 not modified by this Counter Offer shall remain the same. Buyer and Seller acknowledge the down payment and/or loan amount on
30 Page 1 of Purchase & Sale Agreement may change if purchase price is changed as part of this Counter Offer. Upon its execution by
31 both parties, this agreement is made an integral part of the aforementioned Agreement.
32

33 If a signed acceptance is not delivered on or before (date) 7-18-07 at 5:00 A.M. / P.M. this Counter
34 Offer shall be deemed to have expired.
35

36 DELIVERY: Delivery shall be to the agent/broker working with the maker of the Counter Offer in person, by mail, facsimile or electronic
37 transmission of any signed original document, and retransmission of any signed original document. Retransmission of any signed facsimile
38 or electronic transmission shall be deemed to be the same as delivery of an original.
39

40 SELLER [Signature] FOR Roger Stephens Date 7-9-07 Time 5:00 A.M. / P.M.
 41 SELLER _____ Date _____ Time _____ A.M. / P.M.
 42 BUYER [Signature] Date 7/11/07 Time 12:57 A.M. / P.M.
 43 BUYER [Signature] Date _____ Time _____ A.M. / P.M.

317-7469

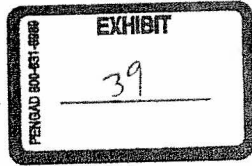
Reply NT 2nd Motu

1404

Reply NT 2nd motn

1405

EXHIBIT "C"



Evan Skinner
#1 CHOICE



801-598-~~8536~~
6380

e mail- EA homes @ people
PC.com

196 South 4th Street
Montpelier, Idaho 83254
Office: (208)-847-EVAN
Cell: (208) 317-6310
Office: (208) 847-3200
Fax: (208) 847-3203

Email: skiev1@gmail.com

Http://www.evanskinner.com

get it ?
know sending back Fax
call or on cell when u
send it

Facsimile Transmittal Sheet

FROM: Evan Skinner

TO: Steven
Stephen DATE: 7-25-07

FAX NUMBER 801-756-3150

NUMBER OF PAGES (INCLUDING COVER) _____

COMMENTS Please initial + Date
where X'd + or sign + Date
+ Fax Back A.S.A.P or email Back +
Let me know when you send it Back
so I will know

Cell # 208-317-6310

Title co. said we can close By next Wed.
Do you want to come up or should
we send the papers to you?

Reply NT 2nd motn

K106



RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 ID# ES072607 DATE July 25, 07

3 LISTING AGENCY NOT LISTED Office Phone # _____ Fax # _____

4 Listing Agent _____ E-Mail _____ Phone # _____

6 SELLING AGENCY Exit Realty of Bear Lake Office Phone # 208-847-3200 Fax # 208-847-3200

7 Selling Agent EVAN SKINNER E-Mail _____ Phone # 847-3010

9 1. BUYER: Steven Cummings (Hereinafter called "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES" COMMONLY KNOWN AS _____ City Montpelier County, ID, Zip 83254 legally described as: _____

13 OR Legal Description Attached as addendum # ONE (Addendum must accompany original offer.)

16 2. \$ 850,000 PURCHASE PRICE: Eight Hundred Fifty Thousand DOLLARS, payable upon the following TERMS AND CONDITIONS (not including closing costs):

18 3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.

20 \$ 3,000.00 (A). EARNEST MONEY: BUYER hereby deposits Three Thousand DOLLARS as Earnest Money evidenced by: cash personal check cashier's check note (due date): To Be Sent in mail 7-26-07 and a receipt is hereby acknowledged. Earnest Money to be deposited in trust account upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker other _____ for the benefit of the parties hereto. The responsible Broker shall be Kyan Olson

27 1031 (B). ALL CASH OFFER: NO YES If this is an all cash offer do not complete lines 32 through 61, fill blanks with "0" (ZERO.) IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY. BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

32 (C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:
 FIRST LOAN of \$ _____ not including mortgage insurance, through FHA, VA, CONVENTIONAL, IHFA, RURAL DEVELOPMENT, OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

38 SECOND LOAN of \$ _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

43 LOAN APPLICATION: BUYER has applied shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____ business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are fulfilled, and the new loan does not increase the costs or requirements to the SELLER.

52 FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees required by FHA or VA.

59 (D). ADDITIONAL FINANCIAL TERMS:
 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
 Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties. Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.

62 \$ 847,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s) shall be adjusted at closing of escrow in: Cash Other: _____

68 BUYER'S Initials (_____) (_____) Date 7-26-07 SELLER'S Initials (_____) (_____) Date _____

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PAGE 3 OF 8 PAGES -- RE-21 PURCHASE & SALES AGREEMENT

PROPERTY ADDRESS: Stephens Ranch ID#: PS072607

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing Buyer + Sellers understands we are doing a 1031 exchange. Also we are doing simultaneous closings between Three Bay Ranch Inc + Mr. Edge Stephens and Three Bay Ranch Inc + Steven Cummings

6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself/herself that the price and condition of the property are acceptable. It is agreed that any item included in section 6 is of nominal value less than \$100.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: 900 shares of Benning Trn. Irrigation - and 100 shares of Mountain Irrigation - 1031 disc - 1.585 International Tractor - Generators and all furniture the seller leaves and all sprinkler equipment + hand tool

(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: Renters personal equipment and items in the home that the seller wishes to keep

7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available.

(A). TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have business day(s) from receipt of the commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). TITLE COMPANY: The parties agree that Northaven Title Company located at McClintock shall provide the title policy and preliminary report of commitment.

(C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Homeowner's Policy of Title Insurance. A title company, at BUYER'S request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Escrow Holder in writing and pay any increase in cost unless otherwise provided herein.

(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

9. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §45-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §45-525 et seq. regarding the General Contractor Disclosure Statement.

BUYER and SELLER acknowledge receipt of copy of this page, which contains PAGE 3 of 8 PAGES. BUYER'S Initials: Date: 7-27-07 SELLER'S Initials: Date: . This form is printed and distributed by the Idaho Association of REALTORS®, Inc. This form has been designed for and is provided only for use by real estate professionals who are members of the National Association of REALTORS®, INC. BY ANY OTHER PERSON IS PROHIBITED. Copyright Idaho Association of REALTORS®, Inc. All rights reserved.

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153 RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 6 JULY, 2005 EDITION

154 PROPERTY ADDRESS: Stephens Ranch 1- of Montpelier ID#: FS022607

158 9. INSPECTION:

157 (A). BUYER chooses to have inspection not to have inspection. If BUYER chooses not to have inspection skip lines 166 to 187. BUYER shall
158 have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within business
159 day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproval of items. BUYER is strongly advised to exercise
160 these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

161 (B). FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection: Get a Home Inspection", HUD 92584-CN must be signed on or
162 before execution of this agreement.

163 (C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

164 1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproval of items, BUYER shall conclusively
165 be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the
166 transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in
167 writing to repair or correct.

168 2). If BUYER does within the strict time period specified give to SELLER written notice of items disapproved of, BUYER shall provide to
169 SELLER pertinent section(s) of written inspection reports. SELLER shall have business day(s) in which to respond in writing. The
170 SELLER, at their option, may correct the items as specified by the BUYERS in their letter or may elect not to do so. If the SELLER agrees to correct the
171 items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the
172 BUYERS inspection contingency.

173 3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the
174 BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the
175 SELLER written notice within business days that they will not continue with the transaction and will receive their Earnest Money back.

176 4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed
177 to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to
178 repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and
179 hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections
180 may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local
181 law.

182 10. LEAD PAINT DISCLOSURE: The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint
183 hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information
184 pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of Seller's Disclosure of Information and Acknowledgment Form and have been
185 provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this
186 contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than
187 or the contingency will terminate, (d) that BUYER hereby waives does not waive this right, (e) that if test results show
188 unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given
189 in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is
190 canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

191 11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR
192 IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

193 12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution
194 of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property
195 Disclosure Form" or other acceptable form prior to signing this Agreement: Yes No N/A

196 13. COVENANTS, CONDITIONS AND RESTRICTIONS, (CC & R'S): BUYER is responsible to obtain and review a copy of the CC & R's (if
197 applicable). BUYER has reviewed CC & R's. Yes No N/A

198 14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and
199 BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the
200 Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions,
201 BUYER has reviewed Homeowner's Association Documents: Yes No N/A Association fees/dues are \$
202 per BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$ and/or property
203 TRANSFER FEES of \$ at closing.

204 15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "NA." as used herein are abbreviations of the term "not applicable." Where
205 this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or
206 conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

207 BUYER'S Initials Date 07-26-07 SELLER'S Initials () () Date

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210 RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 6 JULY, 2005 EDITION

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223 RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 4 of 6 JULY 2005 EDITION

224 PROPERTY ADDRESS: Stephens KAMAH ID# FS072607

225
226 16. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by
227 law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements.
228 SELLER agrees to pay up to \$ 0 of lender required repair costs only.
229 BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.
230

	BUYER	SELLER	Shared Equally	N/A		BUYER	SELLER	Shared Equally	N/A
Appraisal Fee				X	Title Ins. Standard Coverage Owner's Policy		X		
Appraisal Re-Inspection Fee				X	Title Ins. Extended Coverage Lender's Policy - Mortgagee Policy				X
Closing Escrow Fee			X		Additional Title Coverage				X
Lender Document Preparation Fee				X	Fuel in Tank - Amount to be Determined by Supplier				X
Tax Service Fee				X	Well Inspection				X
Flood Certification/Tracking Fee				X	Septic Inspections				X
Lender Required Inspections				X	Septic Pumping				X
Attorney Contract Preparation Fee				X	Survey				X

231 17. OCCUPANCY: BUYER does does not intend to occupy property as BUYER'S primary residence.

232
233
234 18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk
235 through inspection of the premises approximately _____ calendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but
236 for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in
237 substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and
238 agrees to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If
239 BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.
240

241 19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially
242 damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.
243

244 20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to
245 complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale
246 proceeds are available to SELLER. The closing shall be no later than (Date) Aug 3, 07
247 The parties agree that the CLOSING AGENCY for this transaction shall be Northaven Title
248 located at N. Utah Montpelier
249 If a long-term escrow / collection is involved, then the long-term escrow holder shall be _____
250

251 21. POSSESSION: BUYER shall be entitled to possession upon closing or date see Addendum 2 time _____ A.M. P.M.
252 Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations
253 assumed and utilities shall be pro-rated as of closing date.
254

255 22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose
256 sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its
257 members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that
258 sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.
259

260 23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile
261 or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm
262 facsimile and electronic transmitted signatures by signing an original document.
263

264 BUYER'S Initials ([Signature]) (_____) Date 07-26-07 SELLER'S Initials (_____) (_____) Date _____
265

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 6 of 6 JULY, 2005 EDITION

PROPERTY ADDRESS: Stephens Ranch ID# ESD72607

32. ENTIRE AGREEMENT: This Agreement contains the entire Agreement of the parties respecting the matters herein set forth and supersedes all prior Agreements between the parties respecting such matters. No warranties, including, without limitation, any warranty of habitability, agreements or representations not expressly set forth herein shall be binding upon either party.

33. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

34. AUTHORITY OF SIGNATORY: If BUYER or SELLER is a corporation, partnership, trust, estate, or other entity, the person executing this agreement on its behalf warrants his or her authority to do so and to bind BUYER or SELLER.

35. ACCEPTANCE: BUYER'S offer is made subject to the acceptance of SELLER on or before (Date) July 26, 07 at (Local Time in which property is located) 5:30 A.M. P.M. if SELLER does not accept this Agreement within the time specified, the entire Earnest Money shall be refunded to BUYER on demand.

36. BUYER'S SIGNATURES:

SEE ATTACHED BUYER'S ADDENDUM(S): _____ (Specify number of BUYER addendum(s) attached.)

BUYER Signature [Signature]
Date 7-26-07 Time 5:30 A.M. P.M.
Address _____
E-Mail Address _____

BUYER (Print Name) STEVEN B. CHANDLER
Phone # _____ Cell # 801-598-6880
City AF State UT Zip 84002
Fax # _____

BUYER Signature _____
Date _____ Time _____ A.M. P.M.
Address _____
E-Mail Address _____

BUYER (Print Name) _____
Phone # _____ Cell # _____
City _____ State _____ Zip _____
Fax # _____

37. SELLER'S SIGNATURES:
On this date, I/We hereby approve and accept the transaction set forth in the above Agreement and agree to carry out all the terms thereof on the part of the SELLER.

SIGNATURE(S) SUBJECT TO ATTACHED COUNTER OFFER
 SIGNATURE(S) SUBJECT TO ATTACHED ADDENDUM(S) # 1+2

SELLER Signature _____
Date _____ Time _____ A.M. P.M.
Address _____
E-Mail Address _____

SELLER (Print Name) _____
Phone # _____ Cell # _____
City _____ State _____ Zip _____
Fax # _____

SELLER Signature _____
Date _____ Time _____ A.M. P.M.
Address _____
E-Mail Address _____

SELLER (Print Name) _____
Phone # _____ Cell # _____
City _____ State _____ Zip _____
Fax # _____

CONTRACTOR REGISTRATION # (if applicable) _____
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"EXHIBIT A"*Addendum One*

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.


COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 35' WEST 13.66 CHAINS; THENCE NORTH 30° WEST 6.34 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.30 CHAINS; THENCE NORTH 6.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 26 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 39 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 72° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 30 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
 THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 23 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
 AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Initial 

Reply NT 2nd motn

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RE-11 ADDENDUM # Two (1,2,3, etc.)



Date: July 25, 07

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is an ADDENDUM to the Purchase and Sale Agreement.
2 ("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used
3 to change, correct or revise the agreement (such as modification, addition or deletion of a term)).
4

5 PURCHASE AND SALE AGREEMENT DATED: July 25, 07 ID # FS072607
6 ADDRESS: Stephens Ranch
7 BUYER(S): Steven Cummings
8 SELLER(S): Three Bar Ranch - Inc.

9 The undersigned parties hereby agree as follows:

- 10
- 11 1. Included is all available oil + mineral
- 12
- 13 2. Crops to stay the leasee for 2007. Buyer
- 14 to have possession of the home + sheds at closing
- 15
- 16 3. Buyer to purchase property in AS IS condition
- 17
- 18 4. Property has NOT been surveyed.
- 19
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32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
33 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior
34 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this
35 agreement is made an integral part of the aforementioned Agreement.

36 BUYER: [Signature] Date: 7-26-07

37 BUYER: _____ Date: _____

38 SELLER: _____ Date: _____

39 SELLER: _____ Date: _____

40

Reply NT 2nd motu

14/4

ALTA Commitment (8/17/08)

ALTA Commitment Form

COMMITMENT FOR TITLE INSURANCE
Issued by

stewart
title guaranty company

Stewart Title Guaranty Company, a Texas Corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedules A and B and to the Conditions of this Commitment.


This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate six months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.


The Company will provide a sample of the policy form upon request.


This commitment shall not be valid or binding until countersigned by a validating officer or authorized signatory.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A.

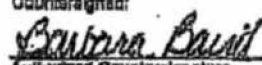


 Chairman of the Board





 President

Countersigned:


 Authorized Countersignature

Northern Title Co. of Idaho

 Company Name

Preston, ID

 City, State

Reply NT 2nd motn

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CONDITIONS

1. The term mortgage, when used herein, shall include deed of trust, trust deed, or other security instrument.
2. If the proposed Insured has or acquired actual knowledge of any defect, lien, encumbrance, adverse claim or other matter affecting the estate or interest or mortgage thereon covered by this Commitment other than those shown in Schedule B hereof, and shall fail to disclose such knowledge to the Company in writing, the Company shall be relieved from liability for any loss or damage resulting from any act of reliance hereon to the extent the Company is prejudiced by failure to so disclose such knowledge. If the proposed Insured shall disclose such knowledge to the Company, or if the Company otherwise acquires actual knowledge of any such defect, lien, encumbrance, adverse claim or other matter, the Company at its option may amend Schedule B of this Commitment accordingly, but such amendment shall not relieve the Company from liability previously incurred pursuant to paragraph 3 of these Conditions.
3. Liability of the Company under this Commitment shall be only to the named proposed Insured and such parties included under the definition of Insured in the form of policy or policies committed for and only for actual loss incurred in reliance hereon in undertaking in good faith (a) to comply with the requirements hereof, or (b) to eliminate exceptions shown in Schedule B, or (c) to acquire or create the estate or interest or mortgage thereon covered by this Commitment. In no event shall such liability exceed the amount stated in Schedule A for the policy or policies committed for and such liability is subject to the insuring provisions and Conditions and the Exclusions from Coverage of the form of policy or policies committed for in favor of the proposed Insured which are hereby incorporated by reference and are made a part of this Commitment except as expressly modified herein.
4. This Commitment is a contract to issue one or more title insurance policies and is not an abstract of title or a report of the condition of title. Any action or actions or rights of action that the proposed Insured may have or may bring against the Company arising out of the status of the title to the estate or interest or the status of the mortgage thereon covered by this Commitment must be based on and are subject to the provisions of this Commitment.
5. The policy to be issued contains an arbitration clause. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. You may review a copy of the arbitration rules at <<http://www.sita.org>>.

stewart
title guaranty company

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P.O. Box 2029, Houston, Texas 77252.

Reply NT 2nd motn

14/16

Closing/Escrow inquiries to:
LORI THORNOCK,
ESCROW OFFICER
All inquiries regarding this report
should be directed to:
BARBARA BAIRD,
TITLE OFFICER

SCHEDULE A

Order No. NTBL-1183

1. Effective Date: May 30, 2007 @ 3:00 PM

2. Policy or policies to be issued:

A. ALTA Owner's (6/17/06)

Standard Coverage

Proposed Insured: THREE BAR RANCHES, INC.

Amount: \$800,000.00

Premium: \$2,350.00

B. ALTA Loan (6/17/06)

Coverage

Proposed Insured:

Amount: \$0.00

Premium: \$0.00

C. Endorsements: \$0.00

3. The estate or interest in the land described in the Commitment and covered herein is:
FBS SIMPLE

4. Title to the estate or interest referred to herein is at the effective date hereof vested in:

ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L.
STEPHENS FAMILY TRUST

5. The land referred to in this Commitment is in the State of IDAHO, County of BEAR LAKE and is
described as follows:

See Attached Exhibit "A"

PROPERTY ADDRESS: BEAR LAKE COUNTY

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"EXHIBIT A"

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 257.5 RODS, THENCE SOUTH 80 RODS; THENCE WEST 2530 FEET; THENCE SOUTH 15° EAST 952 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 3.90 CHAINS; THENCE SOUTH 13° 45' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.63 CHAINS; THENCE NORTH 89° 55' WEST 12.66 CHAINS; THENCE NORTH 30° WEST 6.54 CHAINS; THENCE NORTH 75° EAST 52.50 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 34.17 CHAINS; THENCE SOUTH 76° 15' WEST 35.80 CHAINS; THENCE NORTH 9.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 69 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 99 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 30 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PERKINS; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, AND RUNNING THENCE WEST 1239 FEET; THENCE SOUTH 34° WEST 175 FEET; THENCE SOUTH 35° 30' EAST 1494 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 30 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 318 FEET; THENCE NORTH 15° WEST 218 FEET; THENCE SOUTH 75° 30' WEST 2764 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Reply NT 2nd Motn

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SCHEDULE B - SECTION II

Order No. NTBL-1183

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

A. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records, or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

B. General Exceptions:

- (1) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.*
- (2) Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.*
- (3) Easements, claims of easement or encumbrances which are not shown by the public records.*
- (4) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.*
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (A), (b), or (c) are shown by the public records.*
- (d) Any liens, or rights to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by public records.*

*Paragraphs 1, 2, 3, 4, 5, and 6 will not appear as printed exceptions on extended coverage policies, except as to such parts thereof which may be typed as a Special Exception in Schedule B-Section II.

(See Special exceptions beginning on the next page)

Reply NT 2nd Motn

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SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS:

1. Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$183.54.
Tax Serial No. 3166

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$1,134.00.
Tax Serial No. 3167

Taxes for the year 2007 are a lien, not yet due or payable.
Taxes for the year 2006 have been paid in the amount of \$135.10.
Tax Serial No. 3168
2. Said property is included within the taxing assessment district of BEAR LAKE COUNTY and may be subject to the charges and assessments thereof. (Charges are current according to the information available from the county records.)
3. Rights of way for any roads, ditches, fences, canals, or transmission lines now existing over, under or across said property.
4. ALL EASEMENTS AND RIGHT OF WAYS ALONG EASTERLY LINE OF SAID PARCEL FOR ROADS AND UTILITIES.
3. Mineral rights, claims or title to minerals in or under the land, including but not limited to metals, oil, gas, coal, or other hydrocarbons, sand, gravel or stone, and easements or other rights relating thereto, whether express or implied, recorded or unrecorded.
6. DEED TO STATE OF IDAHO FOR U.S. HIGHWAY 30

RECORDED:	MAY 22, 1956
INSTRUMENT NO.:	71884
RECORDED:	AUGUST 1, 1956
INSTRUMENT NO.:	72172
RECORDED:	SEPTEMBER 20, 1956
INSTRUMENT NO.:	72343
RECORDED:	NOVEMBER 15, 1960
INSTRUMENT NO.:	79310

(Continued)

Reply NT 2nd motn

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SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

7. An Easement for the purpose shown below and rights incidental thereto as set forth in a document

Granted to: UTAH POWER AND LIGHT COMPANY
Purpose: Public Utilities Easement
Dated: SEPTEMBER 5, 1957
Recorded: FEBRUARY 28, 1958
Entry No.: 74487 & 74488

8. RIGHT OF WAY OPTION

RECORDED: AUGUST 21, 1973
INSTRUMENT NO.: 101374

9. OIL AND GAS LEASE

RECORDED: FEBRUARY 11, 1976
INSTRUMENT NO.: 107445

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: JULY 9, 1976
INSTRUMENT NO.: 108991

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: JUNE 24, 1977
INSTRUMENT NO.: 112523

ASSIGNMENT OF OIL AND GAS LEASES

RECORDED: JULY 18, 1977
INSTRUMENT NO.: 112668

CORRECTION OF DESCRIPTION IN OIL AND GAS LEASE

RECORDED: DECEMBER 9, 1977
INSTRUMENT NO.: 113901

ASSIGNMENT OF OVERRIDING ROYALTY INTEREST

RECORDED: DECEMBER 28, 1977
INSTRUMENT NO.: 114109

PARTIAL ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: AUGUST 13, 1980
INSTRUMENT NO.: 122412

(Continued)

Reply NT 2nd motn

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SCHEDULE B - SECTION II

Order No. NTBL-1183

SPECIAL EXCEPTIONS CONTINUED:

RENTAL DIVISION ORDER AND DESIGNATION OF DEPOSITORY

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124283

ASSIGNMENT OF OIL AND GAS LEASE

RECORDED: MARCH 31, 1981
INSTRUMENT NO.: 124284

10. RIGHT OF WAY EASEMENT

RECORDED: MAY 26, 1914
INSTRUMENT NO.: 10835, 10836, 10837 & 10838

11. OFFICIAL MINUTES

RECORDED: MARCH 7, 1997
INSTRUMENT NO.: 166238

NOTE: The policy of title insurance will include an arbitration provision. The company or the insured may demand arbitration. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any services of the Company in connection with its issuance or the breach of a policy provision or other obligation. Please ask your escrow or title officer for a sample copy of the policy to be issued if you wish to review the arbitration provisions and any other provisions pertaining to your Title Insurance coverage.

NOTE: Judgments were checked on the following names, and none were found of record:

THREE BAR RANCHES, INC.
ROGER L. STEPHENS and BARBARA L. STEPHENS

NOTE: In the event this transaction fails to close, a cancellation fee may be charged for services rendered in accordance with the rates that are on file with the Commissioner of Insurance of the State of Idaho.

Barbara Baud
Examiner

Reply NT 2nd motn

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NTBL-1183

COMMITMENT FOR TITLE INSURANCE

**SCHEDULE B-SECTION 1
REQUIREMENTS**

THE FOLLOWING ARE THE REQUIREMENTS TO BE COMPLIED WITH

- (a) Payment to or for the account of the grantors or mortgagee of the full consideration for the estate or interest to insured.
- (b) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (c) The Company hereby reserves the right to add additional special exceptions to coverage and/or requirements for the issuance of any policy pursuant to this commitment upon its receipt and review of additional information including, but not limited to, any items herein below.

In addition to the foregoing, the following requirements must be complied with, to-wit:

1. PURCHASE AND SALE AGREEMENT.
2. We require copies of the Trust Agreement for ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
3. We require copies of the Articles of Corporation for THREE BAR RANCHES, INC.
4. Deed conveying title to the purchasers, executed by: ROGER L. STEPHENS and BARBARA L. STEPHENS, TRUSTEES OF THE ROGER L. AND BARBARA L. STEPHENS FAMILY TRUST.
5. THREE BAR RANCHES, INC. NEEDS TO RENEW ARTICLES OF INCORPORATION WITH THE STATE OF UTAH.

Reply w/ 2nd motn

14/23

EXHIBIT "D"

Reply UT 2nd motn

1424



FAX COVER SHEET

DATE: 8/1/07

FAX # 866-669-6096

TO: LAURA RE: Cummings

FROM: Lori

NUMBER OF PAGES TO FOLLOW: 14 REPC 15

COMMENTS: _____

The materials enclosed with this facsimile transmission are private and confidential and are the property of the sender. The information contained in the material is privilege and is not intended only for the use of the individual(s) or entity(ies) named above. If you are not the intended recipient, be advised that any unauthorized disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this facsimile transmission in error, please immediately notify us by telephone to arrange for return of the forwarded documents to us.

680 North 4th Street Montpelier, ID 83254
 (208)847-2567 Fax (208) 847-0881

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PAGE 2 OF 6 PAGES - REAL PURCHASE & GAIN AGREEMENT

PROPERTY ADDRESS: Stephens Ranch PS072607

5. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing. Buyer + Sellers understands we are doing

a 1031 exchange. ALSO WE ARE SELLING SIMULTANEOUS CLASINGS
between Three Bay Ranch Inc + my Ridge Stephens And
Two Bottom Three Bay Ranch Inc + Sinden Cummings
see Addendum TWO

6. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and things that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television antennas, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water systems, wells, springs, water, water rights, ditches and such rights, if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should satisfy himself that the price and condition of the property are acceptable. It is agreed that any item included in section 6 is of nominal value less than \$100.

(A) ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: all movable items
refrigeration and LED shower at Mountain View - outlet disc
US 30 INTERNATIONAL TRACTOR - attachments and all furniture the
seller leaves and all sprinkler equipment + stand line

(B) ITEMS SPECIFICALLY EXCLUDED IN THIS SALE: Sellers personal equipment
and items in the home that the seller wishes to keep

7. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad claims, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

8. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available.

(A) TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have 90 business day(s) from receipt of the commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within 90 business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S earnest money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B) TITLE COMPANY: The parties agree that Northon Title Company located at N. 4th Mountain shall provide the title policy and preliminary report of commitment.

(C) STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILTA/ALTA Homeowner's Policy of Title Insurance. A title company, at BUYER'S request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires the coverage other than that required by this paragraph, BUYER shall instruct Escrow Holder in writing and pay any increase in cost unless otherwise provided herein.

(D) EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally protects against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

9. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §46-525 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §46-525 et seq. regarding the General Contractor Disclosure Statement.

BUYER and SELLER acknowledge receipt of copy of this page, which contains EXEMPT OF A PART
This form is provided for informational purposes only. It is not intended to be used as a substitute for legal advice. Copyright 1996, Idaho Association of REALTORS, Inc. All rights reserved.

Reply NT 2nd motn

1/27

JUL-26-2007 THU 04:59 PM
07-26-07 02:58PM

Zions Bank Smiths AF

Fax: 2088470881

FAX No. 18017562087

Aug 1 2007 13:09 P.04

P.008
8/1/07

Fax: 2088470881

Jul 26 2007 12:19

P.05

"EXHIBIT A"

Addendum One

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTH 80 RODS; THENCE EAST 62.5 RODS; THENCE NORTH 80 RODS; THENCE EAST 297.5 RODS; THENCE SOUTH 80 RODS; THENCE WEST 280 FEET; THENCE SOUTH 15° EAST 928 FEET; THENCE SOUTH 75° 30' WEST 212 FEET; THENCE NORTH 15° WEST 212 FEET; THENCE SOUTH 75° 30' WEST 2744 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

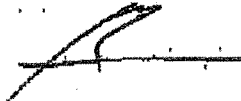
COMMENCING AT A POINT 11.16 CHAINS EAST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 1.80 CHAINS; THENCE SOUTH 15° 49' EAST 8.87 CHAINS; THENCE SOUTH 75° WEST 44.61 CHAINS; THENCE NORTH 15° 30' WEST 13.56 CHAINS; THENCE NORTH 50° WEST 6.64 CHAINS; THENCE NORTH 75° EAST 22.80 CHAINS TO THE PLACE OF BEGINNING.

BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE EAST 94.17 CHAINS; THENCE SOUTH 75° 15' WEST 35.38 CHAINS; THENCE NORTH 5.12 CHAINS, MORE OR LESS, TO THE PLACE OF BEGINNING.

COMMENCING AT A POINT 28 RODS, MORE OR LESS, NORTH AND 11 RODS, MORE OR LESS, EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO, RUNNING THENCE NORTHEASTERLY 65 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE NORTH 50 RODS, MORE OR LESS, TO 40 ACRE LINE; THENCE EAST ALONG SAID LINE 80 RODS; THENCE NORTH ALONG 40 ACRE LINE 27 RODS; THENCE SOUTHWESTERLY 112 RODS AND 8 LINKS TO THE LAND OF GEORGE PEREINE; THENCE SOUTHWESTERLY ALONG THE LINE TO THE PLACE OF BEGINNING.

BEGINNING AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21, TOWNSHIP 12 SOUTH, RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO AND RUNNING THENCE WEST 1280 FEET; THENCE SOUTH 54° WEST 173 FEET; THENCE SOUTH 15° 30' EAST 1844 FEET; THENCE NORTH 75° EAST 3851 FEET, MORE OR LESS, TO THE WEST LINE OF U.S. HIGHWAY 78 NORTH RIGHT OF WAY; THENCE NORTH 15° WEST ALONG SAID RIGHT OF WAY 888 FEET; THENCE SOUTH 75° 30' WEST 212 FEET; THENCE NORTH 15° WEST 212 FEET; THENCE SOUTH 75° 30' WEST 2744 FEET; THENCE NORTH 164 FEET TO THE PLACE OF BEGINNING.

A PERPETUAL EASEMENT OR RIGHT OF WAY OVER A STRIP OF LAND 20 FEET IN WIDTH LEADING FROM THE COUNTY ROAD TO THE FOLLOWING DESCRIBED REAL PROPERTY:
THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 21 IN TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO,
AND RUNNING THROUGH A PART OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 21 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 12 SOUTH OF RANGE 44 EAST OF THE BOISE MERIDIAN, BEAR LAKE COUNTY, IDAHO.

Initial 

Reply NT 2nd Motu

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RE-11 ADDENDUM # _____ (1,2,3, etc.)



Date: July 24, 07

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is an ADDENDUM to the Purchase and Sale Agreement.
2 ("Addendum" means that the information below is added material for the agreement (such as lists or descriptions) and/or means the form is being used
3 to change, correct or revise the agreement (such as modification, addition or deletion of a term)).
4

5 PURCHASE AND SALE AGREEMENT DATED: 7.2.07 ID# ES070207B

6 ADDRESS: Hwy 30 N. of Montpelier

7 BUYER(S): _____

8 SELLER(S): Three Box Ranches Inc.

9 The undersigned parties hereby agree as follows:

10
11 1. Seller (Three Box Ranches Inc) agrees to
12 seller their possession in full, to
13 All terms and conditions to remain the same.

14
15 New Buyer will pay \$50,000 in cash in addition to
16 The terms already agreed upon.

17
18 Buyer to put down - \$20,000 non-refundable
19 And close by Aug 15 or before.

32 To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
33 Addendums or Counter Offers, these terms shall control. All other terms of the Purchase and Sale Agreement including all prior
34 Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this
35 agreement is made an integral part of the aforementioned Agreement.

37 BUYER: _____

Date: 7-24-07

38 BUYER: _____

Date: _____

39 SELLER: _____

Date: _____

40 SELLER: _____

Date: 7/24/07

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RE-21 REAL ESTATE PURCHASE AND SALE AGREEMENT



THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 ID# ES070207 B DATE 7-20-07
2
3 LISTING AGENCY Exit Realty of Bl Office Phone # _____ Fax # _____
4 Listing Agent Dorothy Rails E-Mail _____ Phone # _____
5 SELLING AGENCY Exit Realty of Bl Office Phone # 827-5201 Fax # 847-5203
6 Selling Agent Evan Spuman E-Mail _____ Phone # _____

7
8 1. BUYER: Three Bar Ranches Inc (Hereinafter called
9 "BUYER") agrees to purchase, and the undersigned SELLER agrees to sell the following described real estate hereinafter referred to as "PREMISES"
10 COMMONLY KNOWN AS Stephens Ranch City Mountain View
11 Brian Lake County, ID, Zip _____ legally described as: See Addendum A & B

12 OR Legal Description Attached as addendum # _____ (Addendum must accompany original offer.)

13
14
15 2. \$ 700,000 PURCHASE PRICE: Seven Hundred Thousand DOLLARS,
16 payable upon the following TERMS AND CONDITIONS (not including closing costs):

17
18 3. FINANCIAL TERMS: Note: A+C+D+E must add up to total purchase price.
19
20 \$ 1000 (A). EARNEST MONEY: BUYER hereby deposits One Thousand DOLLARS as
21 Earnest Money evidenced by: cash personal check cashier's check note (due date):
22 other _____ and a receipt is hereby acknowledged. Earnest Money to be deposited
23 in trust account upon receipt, or upon acceptance by all parties and shall be held by: Listing Broker Selling Broker
24 other _____ for the benefit of the parties hereto. The responsible Broker shall be _____

25
26 (B). ALL CASH OFFER: NO YES If this is an all cash offer do not complete lines 32 through 34, fill blanks with
27 "0" (ZERO). IF CASH OFFER, BUYER'S OBLIGATION TO CLOSE SHALL NOT BE SUBJECT TO ANY FINANCIAL CONTINGENCY.
28 BUYER agrees to provide SELLER within _____ business days from the date of acceptance of this agreement by all parties, evidence of
29 sufficient funds and/or proceeds necessary to close transaction. Acceptable documentation includes, but is not limited to, a copy of a recent bank or
30 financial statement or contract(s) for the sale of BUYER'S current residence or other property to be sold.

31
32 (C). NEW LOAN PROCEEDS: This Agreement is contingent upon BUYER obtaining the following financing:
33 FIRST LOAN of \$ _____ not including mortgage insurance, through FHA, VA, CONVENTIONAL, IHFA,
34 RURAL DEVELOPMENT, OTHER _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate
35 Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s).
36 Any reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.
37
38 SECOND LOAN of \$ _____ with interest not to exceed _____ % for a period of _____ year(s) at: Fixed Rate
39 Other _____ BUYER shall pay no more than _____ point(s) plus origination fee if any. SELLER shall pay no more than _____ point(s). Any
40 reduction in points shall first accrue to the benefit of the BUYER SELLER Divided Equally N/A.

41
42 LOAN APPLICATION: BUYER has applied shall apply for such loan(s) within _____ business day(s) of SELLER'S acceptance. Within _____
43 business days of final acceptance of all parties, BUYER agrees to furnish SELLER with a written confirmation showing lender approval of
44 credit report, income verification, debt ratios in a manner acceptable to the SELLER(S) and subject only to satisfactory appraisal and final lender
45 underwriting. If such written confirmation is not received by SELLER(S) within the strict time allotted, SELLER(S) may at their option cancel this
46 agreement by notifying BUYER(S) in writing of such cancellation within _____ business day(s) after written confirmation was required. If SELLER does
47 not cancel within the strict time period specified as set forth herein, SELLER shall be deemed to have accepted such written confirmation of lender approval
48 and shall be deemed to have elected to proceed with the transaction. SELLER'S approval shall not be unreasonably withheld. If an appraisal is required
49 by lender, the property must appraise at not less than purchase price or BUYER'S Earnest Money may be returned at BUYER'S request. BUYER
50 may also apply for a loan with different conditions and costs and close transaction provided all other terms and conditions of this Agreement are
51 fulfilled, and the new loan does not increase the costs or requirements to the SELLER

52
53 FHA / VA: If applicable, it is expressly agreed that notwithstanding any other provisions of this contract, BUYER shall not be obligated to complete the
54 purchase of the property described herein or to incur any penalty or forfeiture of Earnest Money deposits or otherwise unless BUYER has been given in
55 accordance with HUD/FHA or VA requirements a written statement by the Federal Housing Commissioner, Veterans Administration or a Direct
56 Endorsement lender setting forth the appraised value of the property of not less than the sales price as stated in the contract. SELLER agrees to pay fees
57 required by FHA or VA.

58
59 (D). ADDITIONAL FINANCIAL TERMS:
60 Additional financial terms are specified under the heading "OTHER TERMS AND/OR CONDITIONS" (Section 4).
61 Additional financial terms are contained in a FINANCING ADDENDUM of same date, attached hereto, signed by both parties.
62 Line E below is the total of the Purchase Price minus Lines A, C, and D. Only use numbers in these lines.

63
64 \$ 202,000 (E). APPROXIMATE FUNDS DUE FROM BUYERS AT CLOSING (Not including closing costs): Cash at closing
65 to be paid by BUYER at closing in GOOD FUNDS, includes: cash, electronic transfer funds, certified check or cashier's check. NOTE: If any
66 of above loans being Assumed or taken "subject to", any net differences between the approximate balances and the actual balance of said loan(s)
67 shall be adjusted at closing of escrow in: Cash Other: _____

68 BUYER'S Initials (CR) Date 7/2/07 SELLER'S Initials (_____) (_____) Date _____

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71 RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 1 of 6 JULY 2006 EDITION

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 3 of 8 JULY 2006 EDITION

PROPERTY ADDRESS: Stephens Ranch ID#: ES070207B

B. INSPECTION:

(A). BUYER chooses to have inspection not to have inspection. If BUYER chooses not to have inspection skip section 9C. BUYER shall have the right to conduct inspections, investigations, tests, surveys and other studies at BUYER'S expense. BUYER shall, within 10 business day(s) of acceptance, complete these inspections and give to SELLER written notice of disapproval of items. BUYER is strongly advised to exercise these rights and to make BUYER'S own selection of professionals with appropriate qualifications to conduct inspections of the entire property.

(B). FHA INSPECTION REQUIREMENT, if applicable: "For Your Protection! Get a Home Inspection", HUD 92564-CN must be signed on or before execution of this agreement.

(C). SATISFACTION/REMOVAL OF INSPECTION CONTINGENCIES:

1). If BUYER does not within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall conclusively be deemed to have: (a) completed all inspections, investigations, review of applicable documents and disclosures; (b) elected to proceed with the transaction and (c) assumed all liability, responsibility and expense for repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct.

2). If BUYER does within the strict time period specified give to SELLER written notice of disapproved items, BUYER shall provide to SELLER pertinent section(s) of written inspection reports. SELLER shall have 5 business day(s) in which to respond in writing. The SELLER, at their option, may correct the items as specified by the BUYERS in their letter of may elect not to do so. If the SELLER agrees to correct the items asked for in the BUYERS letter, then both parties agree that they will continue with the transaction and proceed to closing. This will remove the BUYER'S inspection contingency.

3). If the SELLER elects not to correct the disapproved items, or does not respond in writing within the strict time period specified, then the BUYER(S) have the option of either continuing the transaction without the SELLER being responsible for correcting these deficiencies or giving the SELLER written notice within 5 business days that they will not continue with the transaction and will receive their Earnest Money back.

4). If BUYER does not give such written notice of cancellation within the strict time periods specified, BUYER shall conclusively be deemed to have elected to proceed with the transaction without repairs or corrections other than for items which SELLER has otherwise agreed in writing to repair or correct. SELLER shall make the property available for all inspections. BUYER shall keep the property free and clear of liens; indemnify and hold SELLER harmless from all liability, claims, demands, damages and costs; and repair any damages arising from the inspections. No inspections may be made by any governmental building or zoning inspector or government employee without the prior consent of SELLER unless required by local law.

10. LEAD PAINT DISCLOSURE: The subject property is is not defined as "Target Housing" regarding lead-based paint or lead-based paint hazards. If yes, BUYER hereby acknowledges the following: (a) BUYER has been provided an EPA approved lead-based paint hazard information pamphlet, "Protect Your Family From Lead in Your Home", (b) receipt of SELLER'S Disclosure of Information and Acknowledgment Form and have been provided with all records, test reports or other information, if any, related to the presence of lead-based paint hazards on said property, (c) that this contract is contingent upon BUYERS right to have the property tested for lead-based paint hazards to be completed no later than _____ or the contingency will terminate, (d) that BUYER hereby waives does not waive this right, (e) that if test results show unacceptable amounts of lead-based paint on the premises, BUYER has the right to cancel the contract subject to the option of the SELLER (to be given in writing) to elect to remove the lead-based paint and correct the problem which must be accomplished before closing, (f) that if the contract is canceled under this clause, BUYER'S earnest money deposit will be returned to BUYER.

11. SQUARE FOOTAGE VERIFICATION: BUYER IS AWARE THAT ANY REFERENCE TO THE SQUARE FOOTAGE OF THE REAL PROPERTY OR IMPROVEMENTS IS APPROXIMATE. IF SQUARE FOOTAGE IS MATERIAL TO THE BUYER, IT MUST BE VERIFIED DURING THE INSPECTION PERIOD.

12. SELLER'S PROPERTY DISCLOSURE FORM: If required by Title 55, Chapter 25 Idaho Code SELLER shall within ten (10) days after execution of this Agreement provide to BUYER "SELLER'S Property Disclosure Form" or other acceptable form. BUYER has received the "SELLER'S Property Disclosure Form" or other acceptable form prior to signing this Agreement: Yes No N/A

13. COVENANTS, CONDITIONS AND RESTRICTIONS (CC& R'S): BUYER is responsible to obtain and review a copy of the CC& R's (if applicable). BUYER has reviewed CC& R's. Yes No

14. SUBDIVISION HOMEOWNER'S ASSOCIATION: BUYER is aware that membership in a Home Owner's Association may be required and BUYER agrees to abide by the Articles of Incorporation, By-Laws and rules and regulations of the Association. BUYER is further aware that the Property may be subject to assessments levied by the Association described in full in the Declaration of Covenants, Conditions and Restrictions. BUYER has reviewed Homeowner's Association Documents: Yes No N/A Association fees/dues are \$ _____ per _____ BUYER SELLER N/A to pay Homeowner's Association SET UP FEE of \$ _____ and/or property TRANSFER FEES of \$ _____ at closing.

15. "NOT APPLICABLE DEFINED:" The letters "n/a," "N/A," "n.a.," and "N.A." as used herein are abbreviations of the term "not applicable." Where this agreement uses the term "not applicable" or an abbreviation thereof, it shall be evidence that the parties have contemplated certain facts or conditions and have determined that such facts or conditions do not apply to the agreement or transaction herein.

BUYER'S Initials (SB) (_____) Date 7/2/07 SELLER'S Initials (_____) (_____) Date _____

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 2 of 6 JULY, 2008 EDITION

PROPERTY ADDRESS: Stephens Ranch Hwy 30 ID# 5070207 B

4. OTHER TERMS AND/OR CONDITIONS: This Agreement is made subject to the following special terms, considerations and/or contingencies which must be satisfied prior to closing

Included in all available location from Bennington + Montpelier
+ all available oil + mineral. 100 shares of Montpelier Energy
+ 900 shares of Bennington Energy.
Cmpy to stay with leads for 2007 -
Armedy has not been surveyed. Contingent upon approved zoning for
a business park + home to be inspected + possible to buyers approval.
Buyer to have option to do a 1031 exchange

5. ITEMS INCLUDED & EXCLUDED IN THIS SALE: All existing fixtures and fittings that are attached to the property are INCLUDED IN THE PURCHASE PRICE (unless excluded below), and shall be transferred free of liens. These include, but are not limited to, all attached floor coverings, attached television antennae, satellite dish and receiving equipment, attached plumbing, bathroom and lighting fixtures, window screens, screen doors, storm windows, storm doors, all window coverings, garage door opener(s) and transmitter(s), exterior trees, plants or shrubbery, water heating apparatus and fixtures, attached fireplace equipment, awnings, ventilating, cooling and heating systems, all ranges, ovens, built-in dishwashers, fuel tanks and irrigation fixtures and equipment, all water systems, wells, springs, water, water rights, ditches and ditch rights, if any, that are appurtenant thereto that are now on or used in connection with the premises and shall be included in the sale unless otherwise provided herein. BUYER should appertain himself that the condition of the included items is acceptable. It is agreed that any item included in this section is of nominal value less than \$100.

(A). ADDITIONAL ITEMS SPECIFICALLY INCLUDED IN THIS SALE: Disc 4385, Tractor, TV, furniture, All furniture in home that seller wishes to leave. + All available wheel lines + all hand tools.

(B). ITEMS SPECIFICALLY EXCLUDED IN THIS SALE:

6. TITLE CONVEYANCE: Title of SELLER is to be conveyed by warranty deed, unless otherwise provided, and is to be marketable and insurable except for rights reserved in federal patents, state or railroad deeds, building or use restrictions, building and zoning regulations and ordinances of any governmental unit, and rights of way and easements established or of record. Liens, encumbrances or defects to be discharged by SELLER may be paid out of purchase money at date of closing. No liens, encumbrances or defects which are to be discharged or assumed by BUYER or to which title is taken subject to, exist unless otherwise specified in this Agreement.

7. TITLE INSURANCE: There may be types of title insurance coverages available other than those listed below and parties to this agreement are advised to talk to a title company about any other coverages available that will give the BUYER additional coverage.

(A). PRELIMINARY TITLE COMMITMENT: Prior to closing the transaction, SELLER or BUYER shall furnish to BUYER a preliminary commitment of a title insurance policy showing the condition of the title to said premises. BUYER shall have _____ business day(s) from receipt of the preliminary commitment or not fewer than twenty-four (24) hours prior to closing, within which to object in writing to the condition of the title as set forth in the preliminary commitment. If BUYER does not so object, BUYER shall be deemed to have accepted the conditions of the title. It is agreed that if the title of said premises is not marketable, or cannot be made so within _____ business day(s) after notice containing a written statement of defect is delivered to SELLER, BUYER'S Earnest Money deposit will be returned to BUYER and SELLER shall pay for the cost of title insurance cancellation fee, escrow and legal fees, if any.

(B). TITLE COMPANY: The parties agree that Northwestern Title Title Company located at _____ shall provide the title policy and preliminary report of commitment.

(C). STANDARD COVERAGE OWNER'S POLICY: SELLER shall within a reasonable time after closing furnish to BUYER a title insurance policy in the amount of the purchase price of the premises showing marketable and insurable title subject to the liens, encumbrances and defects elsewhere set out in this Agreement to be discharged or assumed by BUYER unless otherwise provided herein. The risk assumed by the title company in the standard coverage policy is limited to matters of public record. BUYER shall receive a ILLINOIS Owner's Policy of Title Insurance. A title company, at BUYER's request, can provide information about the availability, desirability, coverage and cost of various title insurance coverages and endorsements. If BUYER desires title coverage other than that required by this paragraph, BUYER shall instruct Closing Agency in writing and pay any increase in cost unless otherwise provided herein.

(D). EXTENDED COVERAGE LENDER'S POLICY (Mortgagee policy): The lender may require that BUYER (Borrower) furnish an Extended Coverage Lender's Policy. This extended coverage lender's policy considers matters of public record and additionally insures against certain matters not shown in the public record. This extended coverage lender's policy is solely for the benefit of the lender and only protects the lender.

8. MECHANIC'S LIENS - GENERAL CONTRACTOR DISCLOSURE STATEMENT NOTICE: BUYER and SELLER are hereby notified that, subject to Idaho Code §46-526 et seq., a "General Contractor" must provide a Disclosure Statement to a homeowner that describes certain rights afforded to the homeowner (e.g. lien waivers, general liability insurance, extended policies of title insurance, surety bonds, and sub-contractor information). The Disclosure Statement must be given to a homeowner prior to the General Contractor entering into any contract in an amount exceeding \$2,000 with a homeowner for construction, alteration, repair, or other improvements to real property, or with a residential real property purchaser for the purchase and sale of newly constructed property. Such disclosure is the responsibility of the General Contractor and it is not the duty of your agent to obtain this information on your behalf. You are advised to consult with any General Contractor subject to Idaho Code §46-525 of seq. regarding the General Contractor Disclosure Statement.

BUYER'S Initials (CS) () Date 7/02/07 SELLER'S Initials () () Date _____

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Reply NT 2nd Motn 1432

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 8 OF 8 JULY 2005 EDITION

PROPERTY ADDRESS: Stephens Ranch

ID#: LS070207B

24. SINGULAR AND PLURAL terms each include the other, when appropriate.

25. BUSINESS DAYS & HOURS A business day is herein defined as Monday through Friday, 8:00 A.M. to 5:00 P.M. in the local time zone where the subject real property is physically located. A business day shall not include any Saturday or Sunday, nor shall a business day include any legal holiday recognized by the state of Idaho as found in Idaho Code § 79-108. The time in which any act required under this agreement is to be performed shall be computed by excluding the date of execution and including the last day. The first day shall be the day after the date of execution. If the last day is a legal holiday, then the time for performance shall be the next subsequent business day.

26. SEVERABILITY: In the case that any one or more of the provisions contained in this Agreement, or any application thereof, shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

27. ATTORNEY'S FEES: If either party initiates or defends any arbitration or legal action or proceedings which are in any way connected with this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party reasonable costs and attorney's fees, including such costs and fees on appeal.

28. DEFAULT: If BUYER defaults in the performance of this Agreement, SELLER has the option of: (1) accepting the Earnest Money as liquidated damages or (2) pursuing any other lawful right and/or remedy to which SELLER may be entitled. If SELLER elects to proceed under (1), SELLER shall make demand upon the holder of the Earnest Money, upon which demand said holder shall pay from the Earnest Money the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees; and said holder shall pay any balance of the Earnest Money, one-half to SELLER and one-half to SELLER'S Broker, provided that the amount to be paid to SELLER'S Broker shall not exceed the Broker's agreed to commission. SELLER and BUYER specifically acknowledge and agree that if SELLER elects to accept the Earnest Money as liquidated damages, such shall be SELLER'S sole and exclusive remedy, and such shall not be considered a penalty or forfeiture. If SELLER elects to proceed under (2), the holder of the Earnest Money shall be entitled to pay the costs incurred by SELLER'S Broker on behalf of SELLER and BUYER related to the transaction, including, without limitation, the costs of brokerage fee, title insurance, escrow fees, appraisal, credit report fees, inspection fees and attorney's fees, with any balance of the Earnest Money to be held pending resolution of the matter.

If SELLER defaults, having approved said sale and fails to consummate the same as herein agreed, BUYER'S Earnest Money deposit shall be returned to him/her and SELLER shall pay for the costs of title insurance, escrow fees, appraisals, credit report fees, inspection fees, brokerage fees and attorney's fees, if any. This shall not be considered as a waiver by BUYER of any other lawful right or remedy to which BUYER may be entitled.

29. EARNEST MONEY DISPUTE / INTERPLEADER: Notwithstanding any termination of this contract, BUYER and SELLER agree that in the event of any controversy regarding the Earnest Money and things of value held by Broker or closing agency, unless mutual written instructions are received by the holder of the Earnest Money and things of value, Broker or closing agency shall not be required to take any action but may await any proceeding, or at Broker's or closing agency's option and sole discretion, may interplead all parties and deposit any monies or things of value into a court of competent jurisdiction and shall recover court costs and reasonable attorney's fees.

30. COUNTERPARTS: This Agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature of two identical copies of the same agreement. Each identical copy of an agreement signed in counterparts is deemed to be an original, and all identical copies shall together constitute one and the same instrument.

31. REPRESENTATION CONFIRMATION: Check one (1) box in Section 1 and one (1) box in section 2 below to confirm that in this transaction, the brokerage(s) involved had the following relationship(s) with the BUYER(S) and SELLER(S).

Section 1:

- A. The brokerage working with the BUYER(S) is acting as an AGENT for the BUYER(S).
- B. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the BUYER(S) is acting as a LIMITED DUAL AGENT for the BUYER(S) and has an ASSIGNED AGENT acting solely on behalf of the BUYER(S).
- D. The brokerage working with the BUYER(S) is acting as a NONAGENT for the BUYER(S).

Section 2:

- A. The brokerage working with the SELLER(S) is acting as an AGENT for the SELLER(S).
- B. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S), without an ASSIGNED AGENT.
- C. The brokerage working with the SELLER(S) is acting as a LIMITED DUAL AGENT for the SELLER(S) and has an ASSIGNED AGENT acting solely on behalf of the SELLER(S).
- D. The brokerage working with the SELLER(S) is acting as a NONAGENT for the SELLER(S).

Each party signing this document confirms that he has received, read and understood the Agency Disclosure Brochure adopted or approved by the Idaho real estate commission and has consented to the relationship confirmed above. In addition, each party confirms that the brokerage's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKERAGE UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

BUYER'S Initials (JS) (_____) Date 7/02/07 SELLER'S Initials (_____) (_____) Date _____

Reply NT 2nd motn

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PROPERTY ADDRESS: Stephens

ID# 83070207 B

16. COSTS PAID BY: Costs in addition to those listed below may be incurred by BUYER and SELLER unless otherwise agreed herein, or provided by law or required by lender, or otherwise stated herein. The below costs will be paid as indicated. Some costs are subject to loan program requirements. SELLER agrees to pay up to \$ _____ of lender required repair costs only. BUYER or SELLER has the option to pay any lender required repair costs in excess of this amount.

	BUYER	SELLER	Shared Equally	N/A		BUYER	SELLER	Shared Equally	N/A
Appraisal Fee	X				Title Ins. Standard Coverage Owner's Policy		X		
Appraisal Re-Inspection Fee				X	Title Ins. Extended Coverage Lender's Policy - Mortgage Policy				X
Closing Escrow Fee			X		Additional Title Coverage				X
Lender Document Preparation Fee				X	Fuel in Tank - Amount to be Determined by Supplier				X
Tax Service Fee				X	Well Inspection				X
Flood Certification/Tracking Fee				X	Septic Inspections				X
Lender Required Inspections				X	Septic Pumping				X
Attorney Contract Preparation or Review Fee				X	Survey				X

17. OCCUPANCY: BUYER does does not intend to occupy property as BUYER'S primary residence.

18. FINAL WALK THROUGH: The SELLER grants BUYER and any representative of BUYER reasonable access to conduct a final walk through inspection of the premises approximately _____ calendar day(s) prior to close of escrow, NOT AS A CONTINGENCY OF THE SALE, but for purposes of satisfying BUYER that any repairs agreed to in writing by BUYER and SELLER have been completed and premises are in substantially the same condition as on acceptance date of this contract. SELLER shall make premises available for the final walk through and agree to accept the responsibility and expense for making sure all the utilities are turned on for the walk through except for phone and cable. If BUYER does not conduct a final walk through, BUYER specifically releases the SELLER and Broker(s) of any liability.

19. RISK OF LOSS: Prior to closing of this sale, all risk of loss shall remain with SELLER. In addition, should the premises be materially damaged by fire or other destructive cause prior to closing, this agreement shall be void at the option of the BUYER.

20. CLOSING: On or before the closing date, BUYER and SELLER shall deposit with the closing agency all funds and instruments necessary to complete this transaction. Closing means the date on which all documents are either recorded or accepted by an escrow agent and the sale proceeds are available to SELLER. The closing shall be no later than (Date) Sept 1, 07. The parties agree that the CLOSING AGENCY for this transaction shall be NORTHERN TITLE located at NIJ. If a long-term escrow / collection is involved, then the long-term escrow holder shall be _____.

21. POSSESSION: BUYER shall be entitled to possession upon closing or date _____ time _____ A.M. P.M. Property taxes and water assessments (using the last available assessment as a basis), rents, interest and reserves, liens, encumbrances or obligations assumed and utilities shall be pro-rated as of Closing Date.

22. SALES PRICE INFORMATION: SELLER and BUYER hereby grant permission to the brokers and either party to this Agreement, to disclose sale data from this transaction, including selling price and property address to the local Association / Board of REALTORS®, multiple listing service, its members, its members' prospects, appraisers and other professional users of real estate sales data. The parties to this Agreement acknowledge that sales price information compiled as a result of this Agreement may be provided to the County Assessor Office by either party or by either party's Broker.

23. FACSIMILE TRANSMISSION: Facsimile or electronic transmission of any signed original document, and retransmission of any signed facsimile or electronic transmission shall be the same as delivery of an original. At the request of either party or the Closing Agency, the parties will confirm facsimile and electronic transmitted signatures by signing an original document.

BUYER'S Initials (JS) (_____) Date 7/02/07 SELLER'S Initials (_____) Date _____

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RE-21 RESIDENTIAL PURCHASE AND SALE AGREEMENT PAGE 4 of 6 JULY 2005 EDITION

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RE-13 COUNTER OFFER, JULY 2006 EDITION Page 1 of 1



RE-13 COUNTER OFFER # AWP (1, 2, 3, etc.)



THIS COUNTER OFFER SUPERCEDES ALL PRIOR COUNTER OFFERS

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTION CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

1 This is a COUNTER OFFER to the Purchase and Sale Agreement Dated: 7-2-07

2 ADDRESS: Stephens Ranch ID# _____

3 BUYER: _____

4 SELLER: Stephens Family Trust

5 The parties accept all of the terms and conditions in the above-designated Purchase and Sale Agreement with the following changes:
6 This is a SELLER counter offer. The SELLER reserves the right to withdraw this offer or accept any other offers prior to the receipt of
7 true copy of signed acceptance of this Counter Offer within the time frame specified herein.

8 This is a BUYER counter offer. The undersigned BUYER reserves the right to withdraw this offer at any time prior to the receipt of a true
9 copy of signed acceptance of this Counter Offer within the time frame specified herein.

10 PURCHASE PRICE \$ 800,000 EIGHT HUNDRED THOUSAND DOLLARS

11 DOWN PAYMENT 1/3 OF \$800,000 (\$266,667)

12 CARRY BALANCE OF \$533,333 ON 10 YEAR CONTRACT AT 8 1/2% INTEREST

13 EARNEST MONEY DOWN \$ 3,000

14 _____
15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 3%
26 28,000 - 30,000.

27 To the extent the terms of this Counter Offer modify or conflict with any provisions of the Purchase and Sale Agreement including all prior
28 Addendums, the terms in this Counter Offer shall control. All other terms of the Purchase and Sale Agreement including all prior Addendum
29 not modified by this Counter Offer shall remain the same. Buyer and Seller acknowledge the down payment and/or loan amount of
30 Page 1 of Purchase & Sale Agreement may change if purchase price is changed as part of this Counter Offer. Upon its execution by
31 both parties, this agreement is made an integral part of the aforementioned Agreement.

32
33 If a signed acceptance is not delivered on or before (date) 7.18.07 at 5:00 AM PM this Counter
34 Offer shall be deemed to have expired.

35
36 DELIVERY: Delivery shall be to the agent/broker working with the maker of the Counter Offer in person, by mail, facsimile or electronic
37 transmission of any signed original document, and retransmission of any signed original document. Retransmission of any signed facsimile
38 or electronic transmission shall be deemed to be the same as delivery of an original.

39
40 SELLER: [Signature] for Roger Stephens Date 7.9.07 Time 5:00 AM PM

41 SELLER _____ Date _____ Time _____ AM PM

42 BUYER: [Signature] Date 7/11/07 Time 11:17 AM PM

43 BUYER [Signature] Date _____ Time _____ AM PM

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RE-11 ADDENDUM JULY 2007 EDITION PAGE 1 OF 1



RE-11 ADDENDUM # _____ (1,2,3, etc.)



DATE: July 30, 07

THIS IS A LEGALLY BINDING CONTRACT. READ THE ENTIRE DOCUMENT INCLUDING ANY ATTACHMENTS. IF YOU HAVE ANY QUESTIONS, CONSULT YOUR ATTORNEY AND/OR ACCOUNTANT BEFORE SIGNING.

This is an ADDENDUM to the Purchase and Sale Agreement.
("Addendum" means that the information below is added insofar as the agreement (which is both of descriptions) and/or means the form is being used to change, correct or revise the agreement (such as modification, addition or deletion of a term).)

PURCHASE AND SALE AGREEMENT DATED: 7/2/07 ID# FS07027B

ADDRESS: Stephane Ranch n. of Montpelier

BUYER(S): Steven Cummings

SELLER(S): Three Bay Ranches I.A.M.

The undersigned parties hereby agree as follows:

Assignment of The Purchase and Sale Agreement from Rodger Stevens to Three Bay Ranches LLC to Steven Cummings
purchase and sales agreement dated 7-2-07
Id # FS07027B. All terms and purchase price to remain the same except Steven Cummings to pay \$50,000 with \$50,000 going to Three Bay Ranches and the balance to pay off Rodger Stevens
All included items to remain the same. All money paid to be cash at closing
Closing date 8-3-07

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the Purchase and Sale Agreement including all prior Addendums or Counter Offers, those terms shall control. All other terms of the Purchase and Sale Agreement including all prior Addendums or Counter Offers not modified by this ADDENDUM shall remain the same. Upon its execution by both parties, this agreement is made an integral part of the aforementioned Agreement.

BUYER: _____ Date: 7-20-07
BUYER: _____ Date: _____
SELLER: Three Bay Ranches Inc Date: _____
SELLER: Dy [Signature] Date: 8/01/07

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RE-11 ADDENDUM JULY 2007 EDITION PAGE 1 OF 1

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EXHIBIT "E"

DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
 residing in Montana,)
 Plaintiff,)
 vs.) Case No.
 ROGER L. STEPHENS, an) CV-09-183
 individual residing in)
 Providence, Utah, JOHN)
 DOES I-X,)
 Defendants.)

ORAL DEPOSITION OF STEVEN B. CUMMINGS

Taken on September 27, 2010

REPORTED BY:

PAUL D. BUCHANAN, RPR, RMR,
CSR No. 7, and Notary Public

1 you were looking at that contain the legal
2 descriptions that you examined to arrive at your
3 conclusion in your affidavit that it included land
4 east of the highway. I am just trying to find out
5 what documents were you looking at.

6 A. I just want to be clear.

7 (Pause in proceedings.)

8 (Discussion off the record.)

9 (Deposition Exhibit Nos. 19 and 20
10 marked for identification.)

11 MR. BUDGE: Back on the record.

12 Q. Mr. Cummings, while we were off the record
13 you went through Deposition Exhibit No. 17, which is
14 the package of documents produced that you previously
15 in your deposition indicated was a complete copy of
16 your file, and you pulled out some documents that we
17 have now marked as Deposition Exhibit Nos. 19 and 20.
18 Do you have those in front of you?

19 A. Yes.

20 Q. And looking first to Exhibit No. 19, the
21 first page is a fax cover sheet from Exit Realty that
22 has the date of 7/26/07 and also reflects a fax time
23 of 12:19 p.m., and that includes a copy of the real
24 estate purchase and sale agreement between the
25 Stephens and Three Bar Ranches but does not contain a

1 legal description; correct?

2 A. That's correct.

3 Q. And if I understand your explanation, after
4 receiving that you then called back to Exit Realty a
5 second time, talked to Mr. Evan Skinner and said what
6 you sent me didn't include the legal description,
7 re fax it?

8 A. It wasn't the second time, I called back
9 again, yes, and again requested him to send me a copy
10 of the legal description. If you notice on there, it
11 referred to Addendum 1, it was the Stephens Ranch and
12 it was Addendum 1. I wanted to see Addendum 1.

13 Q. So then you received back a second fax from
14 Exit Realty that we have identified as Deposition
15 Exhibit No. 20; correct?

16 A. That's correct.

17 Q. And it reflects the same fax date on the top
18 left corner of 7/26 of '07 and the time of 2:59 p.m.;
19 correct?

20 A. That's correct.

21 Q. And that same date and fax time appears on
22 the top left corner of all of the pages in Exhibit
23 No. 20, which consists of the fax cover sheet, the
24 real estate purchase and sale agreement, and also the
25 commitment for title insurance.

1 **A. Yes. Do you mind if I put this in order?**

2 MR. BUDGE: Let's go off the record.

3 (Discussion off the record.)

4 MR. BUDGE: Back on the record.

5 Q. So in Exhibit No. 20 the legal description
6 attached as Exhibit A to the real estate purchase and
7 sale agreement is the same legal description that's
8 attached to the commitment for title insurance?

9 **A. The description is the same.**

10 Q. So now let's go back to where we were before
11 we had the confusion over the documents. In your
12 affidavit you state that you examined both the legal
13 description contained within the buy/sell agreement
14 and the description contained within the title
15 commitment that had been ordered with regard to the
16 buy/sell agreement. So when you made that statement
17 in your affidavit, you are referring to these
18 descriptions that we just discussed in Exhibit No. 20?

19 **A. Yes.**

20 Q. Then your next statement in your affidavit
21 you state, The legal description describes property
22 located on both sides of Highway 30 near Montpelier.
23 Did you make that determination at the time you were
24 doing your due diligence back on July 26, 2007, or
25 were you referring in your affidavit to a later period

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EXHIBIT "F"

Brad H. Bearnson (I.S.B. 7086)
 Aaron K. Bergman (I.S.B. 8878)
 BEARNSON & CALDWELL, LLC
 399 North Main, Suite 270
 Logan, Utah 84321
 Telephone: (435) 752-6300
 Facsimile: (435) 752-6301
 Email: bbearnson@bearnsonlaw.com
 Email: abergman@bearnsonlaw.com
Attorneys for Defendant Northern Title

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual)
 residing in Montana,)
)
 Plaintiff,)

Case No. CV-2009-183

vs.)

AFFIDAVIT OF AARON K. BERGMAN

ROGER L. STEPHENS, an individual)
 residing in Providence, Utah,)
)
 NORTHERN TITLE COMPANY OF)
 IDAHO, INC., an Idaho Corporation,)
)
 JOHN DOES I-X.)

Case No. CV-09-183

Defendants.)
)
 _____)

ROGER L. STEPHENS, an Idaho)
 corporation,)
)

Third Party Plaintiff,)

vs.)

DOROTHY JULIAN, an individual)
 residing in Eagle, Idaho, EVAN)
 SKINNER, an individual residing in)
 Montpelier, Idaho, RYAN OLSEN, an)
 individual residing in Georgetown,)
 Idaho, EXIT REALTY OF BEAR)
 LAKE, LLC an Idaho Limited Liability)
 Company, JOHN DOES I-X.)

Third Party Defendants.)
)

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STATE OF UTAH)
 : ss.
COUNTY OF CACHE)

AARON K. BERGMAN, being first duly sworn on oath, deposes and says:

1. I am an attorney licensed to practice law in the State of Idaho. I represent Defendant Northern Title Company of Idaho, Inc. ("Northern Title") and have personal knowledge of the matters testified to herein and would so testify if called.

2. As the parties and Court are likely aware, clean copies of each document were provided in support to Northern Title's Second Motion in Limine. Where Plaintiff has alleged documents not previously produced were recently raised in Defendant Northern Title's Second Motion in Limine, I will lay out below the source of each exhibit.

3. Exhibit "A" is a true and correct copy of the Affidavit of Roger Stephens, dated September 18, 2012. A copy of such was also produced at Roger Stephens deposition as Exhibit 69, for which I was personally present.

4. Exhibit "B" is a true and correct copy of the Exclusive Seller Representation Agreement, a copy of which was produced at the deposition of Steven Cummings as Exhibit "1."

5. Exhibit "C" is a true and correct copy of a publicly available printout from the State of Idaho, which was obtained online shortly before submitting Northern Title's Memorandum to the Court, which shows that per Idaho's public records, Ryan Olsen was the broker of Exit Realty of Bear Lake, LLC, at the time in question.

6. Exhibit "D" is a true and correct copy of the Affidavit of Dorothy Julian, a copy of which was submitted as Exhibit "22" in the deposition of Dorothy Julian.

7. Exhibit "E" is a true and correct copy of the affidavit of Evan Skinner, a copy of which was produced as Exhibit "24" in the deposition of Dorothy Julian.

8. Exhibit "F" are Northern Title order documents, a portion of which, pages 1, 4, 5, 6, 7 and 10 were produced to Plaintiff in response to Plaintiff's discovery requests, bates-stamped NOR0329-NOR0334. These documents were produced to my office by Northern Title. On discovering that the document pages were incomplete (by investigating the fax-headers at the top of each page), Northern Title found the remainder of the missing pages, pages 2,3,8 and 9. On finding the missing pages, the complete document was immediately supplemented to Plaintiff on June 21, 2012.

9. Exhibit "G" is a true and correct copy of the affidavit of Lori Thornock, a copy of which was submitted as Exhibit "23" to the deposition of Dorothy Julian.

10. Exhibit "H" is a true and correct copy of the Second Affidavit of Lori Thornock, presented as Exhibit "L" to Northern Title's response to Plaintiff's Motion for Summary Judgment, filed with the Court on May 29, 2012.

11. Exhibit "I" is a true and correct copy of the first title commitment, a copy of which was submitted as part of Exhibit "22" to the deposition of Dorothy Julian, and supported by her affidavit therein.

12. Exhibit "J" is a true and correct copy of the second title commitment, a copy of which was submitted as part of Exhibit "22" to the deposition of Dorothy Julian, and supported by her affidavit therein.

13. Exhibit "K" is a true and correct copy of the Real Estate Purchase and Sale Agreement, a copy of which was also submitted as Exhibits "50" through "52" in Phillip Baum's deposition.

14. Exhibit "L" is a true and correct copy of Steven Cummings' affidavit, a copy of which was also submitted as Exhibit 18 to Steven Cummings' deposition.

15. Exhibit "M" is a true and correct copy of portions of the deposition of Steven Cummings.

16. Exhibit "N" is a true and correct copy of the affidavit of Lori Thornock, a copy of which was also submitted as Exhibit "41" to her deposition.

17. Exhibit "O" is a true and correct copy of the Escrow General Provisions, a copy of which was also provided in response to Plaintiff's discovery responses, but bates-stamped NOR0366-NOR0366.

18. Exhibit "P" is a true and correct copy of the Original Warranty Deed, a copy of which was also submitted as Exhibit "57" to Phillip Baum's deposition.

19. Exhibit "Q" is a true and correct copy of portions of Roger Stephen's deposition, for which I was personally present.

20. Exhibit "R" is a true and correct copy of the Corrected Warranty Deed, a copy of which was also submitted as Exhibit "58" to Phillip Baum's deposition.

21. Exhibit "S" is a true and correct copy of the Owner's Policy of Title Insurance issued to Cummings, a copy of which was also produced in response to Plaintiff's discovery requests, but bates-stamped NOR0355-NOR0366.

22. Exhibit "T" is a true and correct copy of the Affidavit of Steven Cummings, produced by Plaintiff to Northern Title on or about May 2, 2012.

23. Exhibit "U" is a true and correct copy of a draft of Lenore Katri's deposition received by the court reporter, which was utilized wherein the final deposition transcript was not

yet available. To the best of my knowledge, the draft and final deposition transcript do not materially differ.

24. Exhibit "V" are documents obtained from Northern Title in support of Northern Title's *Second Motion in Limine*, and specifically are those documents that evidence Northern Title was a properly certified and licensed as a Title Insurance office. To the best of my knowledge, these documents were obtained from the State of Idaho Department of Insurance, and on Northern Title's obtaining these documents, they were immediately filed with Northern Title's *Second Motion in Limine*.

FURTHER AFFIANT SAYETH NOT.

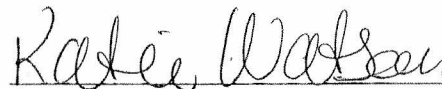
Dated this 12th day of July, 2012.



AARON K. BERGMAN

SUBSCRIBED AND SWORN TO before me this 13 day of July, 2012.





NOTARY PUBLIC
Residing at: Logan, UT
My Commission Expires: 6/17/15

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